

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALISON N MONTANGE
Claimant

APPEAL 21A-UI-20593-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 10/06/19
Claimant: Appellant (2)**

Iowa Code § 96.6(2) – Filing – Timely Appeal
Public Law 116-136, Section 2107 – Pandemic Emergency Unemployment Compensation

STATEMENT OF THE CASE:

On September 16, 2021, Alison Montange (claimant/appellant) filed an appeal from the decision dated October 12, 2020 (reference 03) that determined claimant was ineligible for Pandemic Emergency Unemployment Compensation effective May 10, 2020, based on a finding claimant was monetarily eligible for benefits in South Dakota.

A telephone hearing was held on November 12, 2021. The parties were properly notified of the hearing. Claimant participated personally. Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the appeal timely?
- II. Is the claimant eligible for Pandemic Emergency Unemployment Compensation (PEUC)?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds:

The administrative record is devoid of information as to the basis for finding claimant ineligible for PEUC. The administrative law judge can see claimant is monetarily eligible for benefits in South Dakota effective February 7, 2021. However, there is no South Dakota wage information available. Claimant recalls working in South Dakota for some period of time in 2019 but is unsure specifically when she worked or how much she earned.

The Unemployment Insurance Decision was mailed to claimant at the above address on October 12, 2020. That was claimant's correct address at that time. Claimant does not recall receiving the decision and was unaware she was ineligible for PEUC until she received overpayment decisions nearly a year later.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was timely. The decision dated October 12, 2020 (reference 03) that determined claimant was ineligible for Pandemic Emergency Unemployment Compensation effective May 10, 2020 based on a finding claimant was monetarily eligible for benefits in South Dakota is REVERSED.

Iowa Code § 96.6(2) provides, in pertinent part: “[u]nless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.”

Iowa Admin. Code r. 871-24.35(1)(a) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:
 - (a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark on the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.
 - (b)
 - (c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

There is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and the Administrative Law Judge has no authority to change the decision of representative if a timely appeal is not filed. *Franklin v. Iowa Dept. Job Service*, 277 N.W.2d 877, 881 (Iowa 1979). The ten-day period for appealing an initial determination concerning a claim for benefits has been described as jurisdictional. *Messina v. Iowa Dept. of Job Service*, 341 N.W.2d 52, 55 (Iowa 1983); *Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373 (Iowa 1979). The only basis for changing the ten-day period would be where notice to the appealing party was constitutionally invalid. *E.g. Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Employment Sec. Commission*, 212 N.W.2d 471 (Iowa 1973). The question of whether the Claimant has been denied a reasonable opportunity to assert an appeal is also informed by rule 871-24.35(2) which states that “the submission of any ...appeal...not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.”

The record in this case indicates claimant did not receive the decision and was unaware she was ineligible for PEUC until she received overpayment decisions nearly a year later. Claimant filed the appeal shortly after learning of the decision denying benefits. This is a good cause reason for delay and the administrative law judge therefore concludes the appeal is timely. Because the appeal is timely, the administrative law judge has jurisdiction to address the underlying issues.

PL 116-136 Sec 2107 provides in pertinent part:

PANDEMIC EMERGENCY UNEMPLOYMENT COMPENSATION.

(a) FEDERAL-STATE AGREEMENTS.—

(1) IN GENERAL. — Any State which desires to do so may enter into and participate in an agreement under this section with the Secretary of Labor (in this section referred to as the “Secretary”). Any State which is a party to an agreement under this section may, upon providing 30 days’ written notice to the Secretary, terminate such agreement.

(2) PROVISIONS OF AGREEMENT.— Any agreement under paragraph (1) shall provide that the State agency of the State will make payments of pandemic emergency unemployment compensation to individuals who—

(A) have exhausted all rights to regular compensation under the State law or under Federal law with respect to a benefit year (excluding any benefit year that ended before July 1, 2019);

(B) have no rights to regular compensation with respect to a week under such law or any other State unemployment compensation law or to compensation under any other Federal law;

(C) are not receiving compensation with respect to such week under the unemployment compensation law of Canada; and

(D) are able to work, available to work, and actively seeking work.

(3) EXHAUSTION OF BENEFITS.—For purposes of paragraph (2)(A), an individual shall be deemed to have exhausted such individual’s rights to regular compensation under a State law when—


(A) no payments of regular compensation can be made under such law because such individual has received all regular compensation available to such individual based on employment or wages during such individual’s base period; or

(B) such individual’s rights to such compensation have been terminated by reason of the expiration of the benefit year with respect to which such rights existed.

The administrative record is devoid of information as to the basis for finding claimant ineligible for PEUC. The administrative law judge can see claimant is monetarily eligible for benefits in South Dakota effective February 7, 2021. However, there is no South Dakota wage information available. Claimant recalls working in South Dakota for some period of time in 2019 but is unsure specifically when she worked or how much she earned. The administrative law judge cannot find based on the evidence in the record that claimant was eligible for wages in South Dakota effective May 10, 2020 and therefore ineligible for PEUC.

DECISION:

The administrative law judge concludes the claimant's appeal was timely. The decision dated October 12, 2020 (reference 03) that determined claimant was ineligible for Pandemic Emergency Unemployment Compensation effective May 10, 2020 based on a finding claimant was monetarily eligible for benefits in South Dakota is REVERSED. Claimant is eligible for PEUC in Iowa.



Andrew B. Duffelmeyer
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December 14, 2021
Decision Dated and Mailed

abd/mh