

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KEVIN HOFFMAN
Claimant

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

APPEAL 22A-UI-11969-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Filing – Timely Appeal
PL 116-136, Sec. 2107 - Pandemic Emergency Unemployment Compensation

STATEMENT OF THE CASE:

On May 9, 2022, Kevin Hoffman (claimant/appellant) filed an appeal from the Iowa Workforce Development (“IWD”) decision dated April 21, 2021 (reference 01) that determined effective October 4, 2020 that claimant was not eligible for Pandemic Emergency Unemployment Compensation based on a determination claimant may be monetarily eligible for regular unemployment insurance benefits in Wisconsin.

A telephone hearing was held on June 24, 2022. The parties were properly notified of the hearing. Claimant participated personally. Appeal Nos. 22A-UI-11969, 22A-UI-11970, and 22A-UI-11972 are related and were heard together, forming a single hearing record.

Claimant’s Exhibits 1 and 2 were admitted. Official notice was taken of the administrative record.

ISSUE(S):

I. Is the appeal timely?

FINDINGS OF FACT:

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

The Unemployment Insurance Decision was mailed to claimant at the above address on April 21, 2021. That was claimant’s correct address at that time. Claimant received the decision around that time. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by May 3, 2021. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day.

The delay in appealing was due to claimant spending several months corresponding with Wisconsin officials to determine whether he was eligible for benefits there rather than appealing the April 21, 2021 decision. He eventually was told he was not eligible for benefits in Wisconsin. By then he had begun working elsewhere and was past the deadline to appeal the April 21, 2021 decision. He therefore chose not to file an appeal.

Claimant was prompted to appeal later when he received decisions dated May 4, 2022 which found he was overpaid as a result of the April 21, 2021 decision finding him ineligible for PEUC. At that time the appeals bureau set up an appeal of the April 21, 2021 matter as well.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was untimely. The decision dated April 21, 2021 (reference 01) that determined effective October 4, 2020 that claimant was not eligible for Pandemic Emergency Unemployment Compensation based on a determination claimant may be monetarily eligible for regular unemployment insurance benefits in Wisconsin is therefore final and remains in force.

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."

Claimant received the decision in a timely manner and had a reasonable opportunity to appeal. The delay in appealing was due to claimant spending several months corresponding with Wisconsin officials to determine whether he was eligible for benefits there rather than appealing the April 21, 2021 decision. He later chose not to file an appeal. The administrative law judge finds claimant has not established a good cause reason for the delay in appealing and therefore concludes the appeal is not timely. Because the appeal is not timely, the decision has become final and the administrative law judge lacks jurisdiction to change it.

DECISION:

The administrative law judge concludes the claimant's appeal was untimely. The decision dated April 21, 2021 (reference 01) that determined effective October 4, 2020 that claimant was not eligible for Pandemic Emergency Unemployment Compensation based on a determination claimant may be monetarily eligible for regular unemployment insurance benefits in Wisconsin is therefore final and remains in force.



Andrew B. Duffelmeyer
Administrative Law Judge

June 30, 2022
Decision Dated and Mailed

abd/abd