

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**LESTER P FARMER**  
Claimant

**APPEAL 21A-UI-20005-S2-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

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

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Iowa Code § 96.6(2) – Timeliness of Appeal  
PL 116-136 – Federal Pandemic Emergency Unemployment Compensation

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the October 16, 2020 (reference 01) unemployment insurance decision that stated claimant was not eligible for Pandemic Emergency Unemployment Compensation (PEUC) benefits. Claimant was properly notified of the hearing. A telephone hearing was held on November 1, 2021, and was consolidated with the hearing for appeals 21A-UI-20006-S2-T, 21A-UI-20007-S2-T, and 21A-UI-20008-S2-T. The claimant participated personally. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records and Exhibit D-1.

**ISSUES:**

Is the claimant's appeal timely?  
Is the claimant eligible for PEUC in Iowa?

**FINDINGS OF FACT:**

Having heard the testimony and considered all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to claimant's last known address of record on October 16, 2020. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by October 26, 2020. The appeal was not filed until September 8, 2021, which is after the date noticed on the disqualification decision. Claimant did not receive the decision in the mail. He spoke to an Iowa Workforce Development (IWD) representative who told him he should file in Illinois. Claimant was not told to file an appeal. Claimant filed a timely appeal to three overpayment decisions and that appeal was applied to the disqualifying decision.

Claimant filed an initial claim for regular unemployment insurance benefits funded by the State of Iowa with an effective date of March 29, 2020. His weekly benefit amount was \$481.00. Claimant's base period begins October 1, 2018 and ends September 30, 2019. Claimant's maximum benefit amount for his March 29, 2020, original claim is \$6,751.51. He filed weekly continued claims from March 29, 2020 through October 10, 2020 and exhausted his maximum benefit amount during the week ending July 11, 2020. Claimant received PEUC payments through October 10, 2020.

Claimant earned wages in Illinois during the base period and is eligible for regular unemployment insurance benefits in Illinois.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant's appeal is timely.

Iowa Code section 96.6(2) provides:

*2. Initial determination.* A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Bd. of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case

show that the notice was invalid. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott*, 319 N.W.2d 244, 247 (Iowa 1982). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the appellant did not have a reasonable opportunity to file a timely appeal.

In this case, the claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. While claimant spoke to an IWD representative, he was never given his appeal rights. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). Claimant appealed two overpayment decisions and his appeal was applied to this decision. Therefore, the appeal shall be accepted as timely.

The next issue is whether claimant is eligible for Pandemic Emergency Unemployment Compensation. For the reasons that follow the administrative law judge concludes that he is not because he is monetarily eligible for regular unemployment insurance benefits in the State of Illinois.

PL 116-136 Sec 2107 provides in pertinent part:

PANDEMIC EMERGENCY UNEMPLOYMENT COMPENSATION.

(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.

(emphasis added).

The administrative records reflect that claimant is monetarily eligible for regular unemployment insurance benefits in another state. In order to be eligible for PEUC, a claimant cannot be eligible for regular unemployment benefits in any state. In this case, claimant worked and earned insured wages in Illinois and was eligible for regular unemployment benefits there. Because claimant was eligible for UI in Illinois, claimant does not meet the eligibility requirements for PEUC at this time. Accordingly, PEUC is denied effective the week ending July 18, 2020.

**DECISION:**

The appeal is timely. The October 16, 2020 (reference 01) unemployment insurance decision is affirmed. The claimant is not eligible for Pandemic Emergency Unemployment Compensation effective July 18, 2020.



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Stephanie Adkisson  
Administrative Law Judge

November 19, 2021  
Decision Dated and Mailed

sa/scn

**Note to Claimant**

This decision determines you are not eligible for PEUC benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.

You may qualify for benefits under the Federal Pandemic Unemployment Assistance ("PUA") section of the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act") that discusses eligibility for claimants who are unemployed due to the Coronavirus.

**You will need to apply for PUA to determine your eligibility under the program.**

For additional information on how to apply for PUA go to:  
<https://www.iowaworkforcedevelopment.gov/pua-information>.