

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**AARON B CLAYTON**  
Claimant

**APPEAL NO. 20A-UI-07491-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 06/09/19**  
**Claimant: Appellant (1)**

Iowa Code Section 96.6(2) – Timeliness of Appeal  
P L 116-136, Section 2107 - Pandemic Emergency Unemployment Compensation

**STATEMENT OF THE CASE:**

Aaron Clayton filed a late appeal from the June 23, 2020, reference 04, decision that denied Pandemic Emergency Unemployment Compensation (PEUC) benefits effective May 17, 2020, based on an Agency representative's determination that Mr. Clayton would be monetarily eligible for regular unemployment insurance benefits in the state of Illinois. After due notice was issued, a hearing was held on August 11, 2020. Mr. Clayton participated. Exhibits A, the faxed appeal, and Exhibit B, the mailed appeal, were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, DBIN, KPYX, INMIQ, and the June 23, 2020, reference 01, decision.

**ISSUE:**

Whether there is good cause to treat Mr. Clayton's late appeal as a timely appeal.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: on June 23, 2020, Iowa Workforce Development mailed the June 23, 2020, reference 04, decision to claimant Aaron Clayton at his last-known address of record. The decision denied Pandemic Emergency Unemployment Compensation (PEUC) effective May 17, 2020, based on an Agency representative's determination that Mr. Clayton would be monetarily eligible for regular unemployment insurance benefits in the state of Illinois. The decision stated that an appeal from the decision must be postmarked by July 4, 2020 or be received by the Iowa Workforce Development Appeals Section by that date. The decision also said that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the appeal period would be extended to the next working day. July 4, 2020 was a Saturday and a legal holiday. The next working day was Monday, July 6, 2020. Mr. Clayton received the decision in a timely manner, prior to the deadline for appeal. At some point between July 3 and July 5, 2020, Mr. Clayton read the decision, drafted an appeal and placed the appeal letter in the mail without affixing a postage stamp. Mr. Clayton knew there was no stamp on the correspondence when he placed it in the mail. The United States Postal Service returned the correspondence to Mr. Clayton due to lack of postage. On July 7, 2020, Mr. Clayton faxed an appeal to the Appeals Bureau. On that same day, Mr. Clayton also mailed an appeal with proper postage. The mailed appeal bears a

July 7, 2020 postmark. The Appeals Bureau received the faxed appeal on July 7, 2020. The Appeals Bureau received the mailed appeal on July 9, 2020.

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

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, subsections 10 and 11, 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-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency 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. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

An appeal submitted by mail is deemed filed on the date it is mailed as shown by the postmark or in the absence of a postmark the postage meter mark of the envelope in which it was 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. See Iowa Administrative Code rule 871-24.35(1)(a). See also *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See Iowa Administrative Code rule 871-24.35(1)(b).

The evidence in the record establishes 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. IDJS*, 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. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott*, 319 N.W.2d 244, 247 (Iowa 1982). One 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. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973).

The evidence in the record establishes an untimely appeal. Mr. Clayton had a reasonable opportunity to file an appeal by the July 6, 2020 extended appeal deadline. Mr. Clayton received the decision in a timely manner, reviewed the decision prior to the appeal deadline, drafted an appeal, and then unreasonably elected to place the appeal in the mail without affixing the required postage. A reasonable person would not act in such a manner. A reasonable person would fully expect that the correspondence would be returned to sender as undeliverable, based on the failure to affix the required postage. The appeal in this matter was filed on July 7, 2020. The Appeals Bureau received the faxed appeal on that day. That is the postmark date of the appeal that was mailed with proper postage. The late filing of the appeal was attributable to Mr. Clayton and was not attributable to Iowa Workforce Development or to the United States Postal Service. It was entirely foreseeable and not at all unreasonable for the United States Postal Service to return mailed correspondence due to lack of postage. There is not good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was untimely, the Administrative Law Judge lacks jurisdiction to disturb the June 23, 2020, reference 04, decision. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

#### DECISION:

The claimant's appeal was untimely. The June 23, 2020, reference 04, decision that denied Pandemic Emergency Unemployment Compensation (PEUC) benefits effective May 17, 2020 remains in effect.

*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. Individuals who do not qualify for regular or PEUC benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. *If this decision becomes final or if you are not eligible for Pandemic Unemployment Assistance (PUA), you will have an overpayment of benefits that you will be required to repay.*



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James E. Timberland  
Administrative Law Judge

October 2, 2020  
Decision Dated and Mailed