

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DUANE E MOORE
Claimant

APPEAL NO. 22A-UI-07581-B2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

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

Iowa Code § 96.6-2 – Timeliness of Appeal
Fed Law PL 116-136, Sec 2107 – Federal Pandemic Emergency Unemployment Compensation

STATEMENT OF THE CASE:

Claimant filed an appeal from the May 11, 2021, reference 01, decision that denied PEUC benefits. After due notice was issued, a hearing was held on May 11, 2022. The claimant did participate.

ISSUES:

Whether the appeal is timely?

Is the claimant eligible for PEUC in Iowa?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision was mailed to the claimant's last known address of record on May 11, 2021. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by May 21, 2021. The appeal was not filed until March 30, 2022, which is after the date noticed on the disqualification decision. Claimant stated that he did not know whether he ever received this decision.

Claimant stated that for the last five years up until his job ended in March of 2020, claimant was working for Miller Electric Co, an Omaha, NE based business while working in Iowa at a Google facility.

The 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.

His base period begins the fourth quarter of 2018 and ends the third quarter of 2019. Claimant's maximum benefit amount for his March 29, 2020 original claim is \$12,506.00. He filed weekly continued claims from April 4, 2020 through January 2, 2021 and exhausted his maximum benefit amount during those weeks.

Claimant's base period includes wages from a company based in Nebraska. Claimant's administrative records establish that his claim is listed in Group Code 8.

Miller Electric was the claimant's last employer. He worked full-time for Miller Electric from 2015 through March of 2020. Claimant's administrative records establish that Miller Electric is located in Nebraska. Claimant's administrative records establish that the claimant is monetarily eligible for regular unemployment insurance benefits in the State of Nebraska.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6(2) provides, in pertinent part:

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. . . . 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.

The ten calendar days for appeal begin 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. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

Pursuant to rules Iowa Admin. Code r. 871-26.2(96)(1) and Iowa Admin. Code r. 871-24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

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. 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). 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. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the appellant potentially did not have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was potentially due to an Agency error or misinformation or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). The administrative law judge further concludes that the appeal is therefore deemed timely filed pursuant to Iowa Code Section 96.6-2, and the administrative law judge retains jurisdiction to make a determination with respect to the nature of the appeal. See,

Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

For the reasons that follow the administrative law judge concludes that the claimant is not eligible for Federal Pandemic Emergency Unemployment Compensation at this time because he is monetarily eligible for regular unemployment insurance benefits in the State of Nebraska.

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.

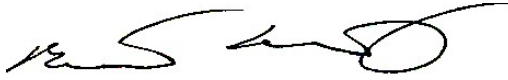
(emphasis added).

The United States Department of Labor issued operating instructions for the PEUC program. See Unemployment Insurance Program Letter No. 17-20 (April 10, 2020). The operating instructions state that in order to be eligible for PEUC, a claimant must have exhausted all rights to regular compensation under the applicable state or Federal law with respect to the applicable benefit year, have no rights to regular compensation with respect to a week under such law or any other state or Federal law, certify that he or she is not receiving unemployment compensation in Canada, and be able to and available for work. The operating instructions instruct state agencies to check at each quarter change if an individual has enough wages to establish a new benefit year in the State, in another State, or a combined wage claim. Finally, the operating instructions direct states to advise a claimant who can establish a new benefit year or combined wage claim to file the claim as they will no longer qualify for PEUC.

In this case, it appears claimant is monetarily eligible for unemployment insurance benefits in Nebraska based on a combined wage claim (taking the wages from Nebraska and combining those wages with those transferred from Iowa). Claimant's relief is to pursue his claim for regular unemployment insurance benefits in Nebraska.

DECISION:

The May 11, 2021, reference 01, decision is affirmed. Although the appeal in this case was deemed timely, and the decision of the representative remains in effect as claimant could have filed for regular unemployment benefits in the state of Nebraska.



Blair A. Bennett
Administrative Law Judge

June 1, 2022
Decision Dated and Mailed

bab/kmj