

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MADELYN CARNES**  
Claimant

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**APPEAL 21A-UI-23646-SN-T  
ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/29/20  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

On October 22, 2021, Madelyn Carnes (claimant/appellant) filed an appeal from the decision dated June 10, 2021 (reference 02) that determined claimant was not eligible for Pandemic Emergency Unemployment Compensation (PEUC) effective September 27, 2020, based on a finding that “all available information indicates [she] would be monetarily eligible for regular unemployment insurance benefits in the state of Kansas.”

A telephone hearing was held on December 15, 2021. The parties were properly notified of the hearing. Claimant participated personally. Official notice was taken of the administrative records. Official notice was taken of the Kansas and Arizona claimant handbooks. Exhibit D-1 and D-2 were received into the record.

**ISSUES:**

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

**FINDINGS OF FACT:**

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

Claimant filed a combined wage claim for unemployment insurance benefits in the state of Iowa using insured wages she received from Kansas effective March 29, 2020. Benefits were allowed and were paid out until they were exhausted in the week ending September 26, 2020. Because her regular unemployment insurance benefits were exhausted, Iowa then began issuing Pandemic Emergency Unemployment Compensation to claimant, beginning with the week ending October 3, 2020. These payments continued through the week ending November 14, 2020. The decision which was appealed was issued on June 10, 2021, approximately seven months after PEUC had stopped paying out.

The Department did not participate or submit any evidence for the hearing. The record has little information indicating how the Department determined "all available information indicates [she] would be monetarily eligible for regular unemployment insurance benefits in the state of Kansas." The representative wrote the following rationale on a decision worksheet, "They are eligible for a KS-AZ CWC in Kansas effective September 27, 2020. The claimant shows wages of \$13,000.00 in the [fourth] quarter of 2019 and \$1,062.37 in the first quarter of 2020 in Kansas." The information in this explanation does not fit wage records the administrative law judge found on file. For instance, the administrative law judge has found no record of the claimant receiving \$13,000.00 in insured wages in Arizona or Kansas in the fourth quarter of 2019. Wage records for the period in question are only partially available.

The claimant testified she last worked in Kansas at Von Maur from August 2018 through January 2020. The claimant worked for an employer named Barton in Arizona from January 2020 until March 16, 2020. The claimant explained that the \$917.00 in insured wages would have been for the final two weeks she worked there in March 2020. The claimant then worked for Star of India from November 2020 to November 2021.

A disqualification decision was mailed to the claimant's address of record on June 21, 2021. The claimant did not receive the decision. (Exhibit D-1) The first notice of disqualification was the overpayment decision of October 13, 2021. The appeal was sent after receipt of that decision within the appeal period on the decision. (Exhibit D-2)

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

For the reasons that follow, the administrative law judge concludes the claimant's appeal was timely. The decision dated June 10, 2021 (reference 02) that determined claimant was not eligible for Pandemic Emergency Unemployment Compensation (PEUC) effective September 27, 2020, 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 claimant did not receive the decision disqualifying her from benefits. The first notice the claimant had of her disqualification was when she received the overpayment decision on October 13, 2021. The claimant's appeal is otherwise timely.

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.

To be eligible for PEUC, a claimant must (1) have exhausted all rights to regular compensation under the State law or under Federal law with response to a benefit year and (2) have no rights to regular compensation under such law or any other State unemployment compensation law or to compensation under any other Federal law. The claimant must also be able to work, available for work, and actively seeking work.

The claimant is deemed to have exhausted rights to regular compensation under a state law when no payments of regular compensation can be made under such law because the claimant has received all regular compensation available based on base period wages and/or wages. The claimant will also be deemed to have exhausted rights to regular compensation under a state law when the claimant'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 U.S. Department of Labor has provided guidance on PEUC to state workforce agencies. This guidance provides in part that states "must verify that claimants have no entitlement to regular UC before processing the application for PEUC." It also provides that before accepting a PEUC claim "the state that is taking the claim must review the individual's work history, examine potential entitlement and advise the individual of all filing options." It provides further that "when an individual files an initial claim for PEUC, the State agency must determine promptly the eligibility of the individual and, if eligible, the weekly and maximum benefit amounts of PEUC payable. If denied PEUC, the individual must be issued a determination that is appealable." See Unemployment Insurance Program Letter No. 17-20, pp. I-8 to I-10.

The evidence indicates the Department did not verify that claimant had no entitlement to unemployment insurance benefits, did not advise her of all filing options prior to accepting the PEUC claim, and did not promptly issue a determination as to her PEUC eligibility. It did not issue a decision as to her PEUC eligibility, until seven months after it issued the last PEUC payment. When it did finally issue a decision, it did not explain in the decision how it reached the conclusion that she was eligible for regular benefits elsewhere. In fact, it did not find that she was eligible elsewhere but only that "all available information indicates [she] would be." Furthermore, the representative's rationale was not clearly provided on the decision. What the decision should have said is that the representative believed the claimant was eligible for a combined wage claim based on insured wages she received in Arizona and Kansas, rather than appearing to allege she was eligible in Kansas. Finally, it failed to present any evidence supporting its contentions at hearing.

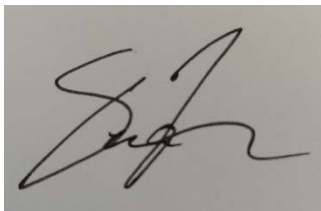
The administrative law judge finds it is the Department's burden to show claimant is ineligible for PEUC due to being eligible for unemployment insurance benefits elsewhere. This is supported by the guidance set forth above. The Department has failed to meet that burden here. The Department has presented no evidence to support its finding that claimant is ineligible for PEUC

due to being eligible for unemployment insurance benefits elsewhere, and there is insufficient other evidence available at this time for the administrative law judge to make such a finding.

The administrative law judge therefore concludes claimant is eligible for PEUC effective with benefit week ending September 27, 2020, due to her having exhausted her right to benefits in Iowa and having no right to other benefits elsewhere.

**DECISION:**

The administrative law judge concludes the claimant's appeal was timely. The decision dated June 10, 2021 (reference 02) that determined claimant was not eligible for Pandemic Emergency Unemployment Compensation (PEUC) effective September 27, 2020 is REVERSED. Claimant is eligible for PEUC.



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Sean M. Nelson  
Administrative Law Judge  
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January 21, 2022  
Decision Dated and Mailed

smn/scn