

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRANDON L CRANE
Claimant

APPEAL 19R-UI-00815-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 11/25/18
Claimant: Appellant (1)**

Iowa Code § 96.6(1) – Filing Claims
Iowa Admin. Code r. 871-24.2(4) – Cancellation of Unemployment Insurance Claim

STATEMENT OF THE CASE:

Brandon L. Crane (claimant) filed an appeal from the December 18, 2018, reference 06, unemployment insurance decision that denied the request to cancel the claim. After due notice was issued, a telephone conference hearing was held on February 14, 2019. The claimant participated. Brian Altemeier from Precision Concrete, Inc. (employer) participated on the claimant's behalf. The administrative law judge took official notice of the administrative record.

ISSUE:

Should the request to cancel the claim with an effective date of November 25, 2018, be granted?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant has previously worked for the employer and has filed for and received unemployment insurance benefits each year since 2014. At some point, prior to November 25, 2018, the claimant and his boss Brian Altemeier contacted Iowa Workforce Development (IWD) to determine that the claimant had ten times requalified for benefits following his separation from his prior employer and to verify his benefit amounts. The IWD representative they spoke to did not know the benefit amounts and stated he would need to call them back. However, the claimant and Altemeier believed after that conversation that the claimant could file his claim for benefits in November 2018 and then refile after the first of the year to obtain more unemployment benefits.

The claimant filed his claim for benefits effective November 25, 2018. The monetary record was mailed on December 4, 2018 and he received it within two to three days. He read the information that stated he had ten days to appeal the monetary record if he disagreed with it. The claimant did not read the unemployment insurance handbook as he agreed to when he filed his claim for benefits. The claimant has filed continued weekly claims and received

unemployment insurance benefits for the ten weeks between November 25, 2018 and February 2, 2019.

Despite the information Altemeier and the claimant claim to have learned from the IWD representative prior to filing the claim, the claimant attempted to refile his claim for benefits and obtain additional benefits on December 18, 2018. The claimant learned while speaking with an IWD representative that he would not be able to refile the claim and he requested to cancel his claim to refile at a later date for additional benefits. The representative denied the claimant's request as untimely.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's request to cancel his claim for unemployment insurance benefits effective November 25, 2018, is not timely and is denied.

Iowa Code section 96.6(1) provides:

Filing – determination – appeal.

1. Filing. Claims for benefits shall be made in accordance with such regulations as the department may prescribe.

Iowa Admin. Code r. 871-24.2(4) provides, in relevant part:

Procedures for workers desiring to file a claim for benefits for unemployment insurance.

(4) Cancellation of unemployment insurance claim.

...

c. Cancellation requests within the ten-day protest period. The benefits bureau, upon review of the timely request and before payment is made, may cancel the claim for the following reasons:

(1) The individual found employment or returned to regular employment within the protest period.

(2) Cancellation would allow the individual to refile at the change of a calendar quarter to obtain an increase in the weekly or maximum benefit amount or the individual would receive more entitlement from another state.

(3) The individual filed a claim in good faith under the assumption of being separated and no actual separation occurred.

(4) The individual did not want to establish a benefit year because of eligibility for a low weekly or maximum benefit amount.

d. Other valid reasons for cancellation whether or not ten-day protest period has expired.

- (1) The individual has an unexpired unemployment insurance claim in another state and is eligible for a remaining balance of benefits.
- (2) The individual received erroneous information regarding entitlement or eligibility to unemployment insurance benefits from an employee of the department.
- (3) The individual has an unexpired railroad unemployment insurance claim with a remaining benefit balance which was filed prior to the unemployment insurance claim.
- (4) The individual exercises the option to cancel a combined wage claim within the ten days allowed by federal regulation.
- (5) The individual has previously filed a military claim in another state or territory. Wages erroneously assigned to Iowa must be deleted and an interstate claim must be filed.
- (6) Federal wages have previously been assigned to another state or territory or are assignable to another state or territory under federal regulation. Federal wages erroneously assigned to Iowa must be deleted and the appropriate type of claim filed.
- (7) The Iowa wages are erroneous and are deleted and the wages from one other state were used, the claim shall be canceled and the wages returned to the transferring state.

The claimant has argued he received erroneous information from an IWD representative and that is why he should be allowed to cancel his claim. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how the factual issues were resolved. The claimant has consistently filed for and received unemployment insurance benefits since 2014. Altemeier regularly helps his employees determine their benefit amounts before laying them off and understands when an employee has ten times requalified for benefits following a separation. It is not believable that either of these individuals with experience and knowledge of the unemployment insurance process would reasonably believe that a benefit claim year could be established and then recalculated before the benefit year expired. Additionally, the claimant contends the erroneous advice he was given was to refile after the first of the year. However, he then stated that he tried to refile on December 18, 2018 which is what prompted his request to cancel the claim. The claimant's argument that he received erroneous information from an IWD representative on which he reasonably relied is not persuasive.

The claimant attempted to cancel his claim to refile in the next quarter to receive additional benefits. Under that circumstance, the claimant can only cancel his claim within ten days of the monetary record and before any payments are made. In this case, the claimant's request was not within ten days and must be denied.

DECISION:

The December 18, 2018, reference 06, unemployment insurance decision is affirmed. The claimant's request to cancel the Iowa claim for unemployment insurance benefits effective November 25, 2018, is denied.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn