

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ROSANETTE L LIND
Claimant

APPEAL 14A-UI-11332-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 10/26/14
Claimant: Appellant (1-R)**

Iowa Code § 96.4(4) – Monetary Eligibility and Subsequent Benefit Year
Iowa Code § 96.3(4) – Determination of Benefits

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 27, 2014, monetary decision. After due notice was issued, a telephone conference hearing was held on November 20, 2014. Claimant participated and was represented by Stuart Cochrane, Attorney at Law. Claimant's Exhibit A was received.

ISSUE:

Is the monetary record dated October 27, 2014, correct?
Is the claimant monetarily eligible for benefits effective October 26, 2014?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The base period for the claim year effective October 26, 2014, covers the third and fourth quarters of 2013, and the first and second quarters of 2014. The third quarter of 2014, is the lag quarter, which does not count towards the benefit year wages or benefit calculation. Claimant presented IRS Forms 1099-MISC as evidence of wages in 2012 and 2013, and a handwritten record of income in 2014, from Lexis/Nexis Risk Solutions, Inc. (Claimant's Exhibit A) The issue of whether the claimant's relationship with that business was as an employee or an independent contractor has not yet been determined. The address for Lexis/Nexis Risk Solutions, Inc. is PO Box 8808, Dayton OH 45401. The home office is located at 1900 NW Expressway, Ste 1600, Oklahoma City OK 73118.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the monetary record is correct unless a misclassification investigation and determination reveals otherwise.

Iowa Code § 96.4-4 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

4. The individual has been paid wages for insured work during the individual's base period in an amount at least one and one-quarter times the wages paid to the individual during that quarter of the individual's base period in which the individual's wages were highest; provided that the individual has been paid wages for insured work totaling at least three and five-tenths percent of the statewide average annual wage for insured work, computed for the preceding calendar year if the individual's benefit year begins on or after the first full week in July and computed for the second preceding calendar year if the individual's benefit year begins before the first full week in July, in that calendar quarter in the individual's base period in which the individual's wages were highest, and the individual has been paid wages for insured work totaling at least one-half of the amount of wages required under this subsection in the calendar quarter of the base period in which the individual's wages were highest, in a calendar quarter in the individual's base period other than the calendar quarter in which the individual's wages were highest. The calendar quarter wage requirements shall be rounded to the nearest multiple of ten dollars.

If the individual has drawn benefits in any benefit year, the individual must during or subsequent to that year, work in and be paid wages for insured work totaling at least two hundred fifty dollars, as a condition to receive benefits in the next benefit year.

Iowa Code § 96.3-4 provides:

4. Determination of benefits. With respect to benefit years beginning on or after July 1, 1983, an eligible individual's weekly benefit amount for a week of total unemployment shall be an amount equal to the following fractions of the individual's total wages in insured work paid during that quarter of the individual's base period in which such total wages were highest; the director shall determine annually a maximum weekly benefit amount equal to the following percentages, to vary with the number of dependents, of the statewide average weekly wage paid to employees in insured work which shall be effective the first day of the first full week in July:

If the number of dependents is:	The weekly benefit amount shall equal the following fraction of high quarter wages:	Subject to the following maximum percentage of the statewide average weekly wage.
0	1/23	53%
1	1/22	55%
2	1/21	57%
3	1/20	60%
4 or more	1/19	65%

The maximum weekly benefit amount, if not a multiple of one dollar shall be rounded to the lower multiple of one dollar. However, until such time as sixty-five percent of the statewide average weekly wage exceeds one hundred ninety dollars, the maximum weekly benefit amounts shall be determined using the statewide average weekly wage computed on the basis of wages reported for calendar year 1981. As used in this section "dependent" means dependent as defined in section 422.12, subsection 1, paragraph "c", as if the individual claimant was a taxpayer, except that an individual claimant's nonworking spouse shall be deemed to be a dependent under this section. "Nonworking spouse" means a spouse who does not earn more than one hundred twenty dollars in gross wages in one week.

Iowa Admin. Code r. 871-24.1(11) provides:

Base period. The period of time in which the amount of wages paid to an individual in insured work which determines an individual's eligibility for, and the amount and duration of, benefits. The base period consists of the first four of the last five completed calendar quarters immediately preceding the calendar quarter in which the individual's claim for benefits is effective with the following exception. The department shall exclude three or more calendar quarters from the individual's base period in which the individual received workers' compensation or indemnity insurance benefits and substitute consecutive calendar quarters immediately preceding the base period in which the individual did not receive workers' compensation or indemnity insurance benefits. This exception applies under the following conditions:

- a. The individual did not work in and receive wages from insured work for three calendar quarters of the base period, or
- b. The individual did not work in and receive wages from insured work for two calendar quarters and lacked qualifying wages from insured work to establish a valid claim for benefits during another quarter of the base period.

Since the proffered wages are not identified as such, the monetary record is correct. However, since there is a dispute about claimant's employment status with this business, the issue of whether claimant has been misclassified as an independent contractor is remanded for resolution with notice to both parties and claimant's attorney. That misclassification decision may call for a monetary redetermination.

DECISION:

The October 27, 2014, monetary determination is affirmed pending a misclassification determination.

REMAND:

The misclassification issue delineated in the findings of fact is remanded to the tax section of Iowa Workforce Development for investigation and determination of claimant's status with this business and, if an employment relationship is established, the addition of the wages according to the evidence contained in Claimant's Exhibit A.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs