

BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

SHAWNTAI SHARP

Claimant

HEARING NUMBER: 17BUI-03458

EMPLOYMENT APPEAL BOARD
DECISION

N O T I C E

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.4-4, 96.3-4

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE DENIED

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds the administrative law judge's decision is correct. The administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED**.

The Claimant urges that she was paid in a different pattern than the wage records show. She points to check stubs showing that she was paid in October for work done in September. The problem with this is that for monetary eligibility purposes the law specifically uses "when paid" not "when earned."

Every employer in the state is required to file a form 65-5300 every quarter which lists "wages **paid** with respect to all the employer's business maintained within this state" 871 IAC 22.3(1). The form 65-5300 is detailed and its minimum contents are set out in rule 22.3(6). Of most interest here is that the Employer must list "[t]he social security number, name (last name first), and total wages **paid** to each employee during the calendar quarter." 871 IAC 22.3(6)(a)(emphasis added). It is this report of wages that is used to determine monetary eligibility and to determine whom to charge for benefits when a claim is filed. Rule 23.2 titled "[d]efinition of wages for employment during a calendar quarter" provides:

Wages earned but not paid during the calendar quarter shall be considered as wages for employment in the quarter paid.

871 IAC 23.2(2). When wages are not listed on a wage report then the wages are considered paid when the check is written, when the money was direct deposited, or when the employee received the payment in person – in other words, when paid or received, not when earned. 871 IAC 23.2(2). The regulations are consistent with the plain language of the statute. The statute repeatedly refers to when wages are “paid” when setting out the various monetary calculations. Iowa Code §96.3(4)(weekly benefit amount is “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”); Iowa Code §96.4(4)(a) (using “paid wages” three times when setting out the three eligibility calculations).

The calculation is very close here and if the Claimant could either come up with additional wages **paid** in the third quarter she should notify Workforce. But in the meantime the calculations of IWD are correct. She does not meet the 1 ¼ times requirement. Since the Administrative Law Judge’s calculations are slightly incorrect, due to rounding we set them out here.

The Claimant earned a total of \$8,422.21 in her base period. This is broken down as \$1672.95 in the third quarter of 2016 and \$6,749.26 in the fourth quarter of 2016. According to the statute “The calendar quarter wage requirements shall be rounded to the nearest multiple of ten dollars.” Iowa Code §96.4(4)(a). So wages reported are not rounded, the “requirements” are rounded to the nearest multiple of ten. So the Claimant earned a total of \$8,422.21 in the base period. She earned \$6,749.26 in her high quarter. One and one quarter times \$6,749.26 is \$8,436.58. Even without rounding \$8,436.58 is larger than the total base period wages of \$8,422.21. Rounding makes the numbers \$8,440 for the one and one quarter times the high quarter and \$8,420 for the total base period wages, thus increasing the difference to \$20. Rounding before multiplying yields $(\$6,750 * 1.25) = 8437.5$ which is bigger than \$8,422.21. Again if we round these numbers a second time they become \$8,440 and \$8,420 and the difference is still \$20. Even if we round *each* quarter we get the same result: $(\$6,750 * 1.25) = 8437.5$ rounded to \$8440; Base period total = \$6750 + \$1670 = \$8420 and still it is short \$20.

We note that as far as the records show the Claimant only has these two quarters of earnings from the second quarter of 2015 through the end of the first quarter of 2017. Thus refiling so that the original claim date is a more recent time will not have any effect yet. If, however, the Claimant has gotten wages paid recently, that is, since the start of April of this year, then she may try to file again in the third quarter (July-Sept) of 2017 if she is unemployed at that time. But without such earnings she remains ineligible no matter when we put the original claim date.

Since eligibility uses “when paid” not “when earned” the Administrative Law Judge correctly determined that the Claimant was not eligible for benefits.

Kim D. Schmett

Ashley R. Koopmans

