

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

BRETT A KELLEY
Claimant

APPEAL NO: 13A-UI-13181-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 12/23/12
Claimant: Appellant (1)

871IAC24.2(1)(g) – Filing Weekly Claims (Retroactive Benefits)

STATEMENT OF THE CASE:

Brett A. Kelley (claimant) appealed a representative's November 22, 2013 decision (reference 03) that denied his request for retroactive benefits for the weeks between August 18, 2013 and November 16, 2013. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on December 24, 2013. The claimant participated in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant establish sufficient grounds to allow his request for retroactive benefits?

FINDINGS OF FACT:

The claimant filed a claim for unemployment insurance benefits effective December 23, 2012. He had a separation from employment with employer Amsted Rail Company, Inc. on or about August 8, 2013. He reactivated his unemployment insurance claim by filing an additional claim effective August 18, 2013. However, he did not make any continued weekly claims at that time. A representative's decision was issued on September 10, 2013 (reference 02) which found that the claimant's separation from this employer was disqualifying. Agency records indicate that the claimant has not appealed that decision. The backside of that decision contained the instruction:

5. NOTICE THAT WEEKLY CLAIMS FOR BENEFITS MUST BE FILED – To protect your benefit rights through the appeals procedure you must **CONTINUE** to file your claims by phone each week, whether this decision is appealed by you or by an employer.

(Emphasis original.) The claimant still did not make any weekly continued claims after that decision was issued. Even though by mid-September the claimant knew that there had been a decision issued denying him benefits, he had decided to wait for negotiations between his union

and the employer regarding his separation to be concluded before further any unemployment insurance benefits. The union and the employer reached an agreement on or about November 12, 2013 in which the employer appears to have agreed not to further resist the claimant's eligibility for unemployment insurance benefits. The claimant then made his application for retroactive benefits for the period between August 18 and November 16.

During the period of August 18, 2013 the claimant was enrolled in school. He did search for part-time employment, but not full-time employment as he had been employed with the employer.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant should receive retroactive benefits for the weeks between August 18 and November 16, 2013.

Agency rule 871 IAC 24.2(1)g establishes the criteria for filing weekly claims for benefits. The rule provides for retroactive benefits if good cause is shown. The claimant not has established that he attempted unsuccessfully to use the call-in procedure or that he was able and available for work on the same basis as when his base period wage credits were earned. The claimant was on notice of the requirement for claimants to continue to make weekly claims during weeks during in which a contest or appeal of their eligibility is in question. Further, the fact that an employer has decided to no longer challenge a claimant's claim for benefits does not automatically render that claimant eligible for benefits. The first issue is whether the employer can now withdraw its protest to the claimant's claim. *Kehde v. Iowa Division of Job Service*, 318 N.W.2d 202 (Iowa 1982). The decision which concluded the claimant was ineligible for benefits based on the separation has not been appealed in remains in full force and effect; the employer's agreement to no longer protest the claim is ineffective. The claimant has not established reasonable cause for his delay in filing his weekly claims. His request for retroactive benefits for the weeks between August 18 and November 16, 2013 is denied.

DECISION:

The representative's November 22, 2013 decision (reference 03) is affirmed. The claimant's request for retroactive benefits for the weeks from August 18 through November 16, 2013 is denied.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs