

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMES D STERBENZ
Claimant

APPEAL NO. 19A-UI-06830-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 08/04/19
Claimant: Appellant (1)

Iowa Code Section 96.3(4) – Monetary Record

STATEMENT OF THE CASE:

James Sterbenz filed a timely appeal from the August 21, 2019, reference 02, decision that denied his request to change the number of dependents on his claim, based on the deputy's conclusion that the request was untimely. After due notice was issued, a hearing was held on September 19, 2019. Mr. Sterbenz participated. Exhibit A and Department Exhibits D-1, D-2 and D-3 were received into evidence. The administrative law judge took official notice of the 2019 Unemployment Insurance Claimant Handbook information setting forth the maximum weekly benefits based on the number of dependents.

ISSUES:

Whether the claimant made a timely request to change the number of dependents on his claim.

Whether dependents should be added to the claim.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: James Sterbenz established an original claim for benefits that was effective August 4, 2019. When Mr. Sterbenz set up the claim, he claimed zero dependents. Mr. Sterbenz resides in a home with his wife, their infant son, and his wife's son from an earlier relationship. Mr. Sterbenz's wife works outside the home and earns about \$1,000.00 per week. Under the terms of the custody agreement applicable to the step-son, Mr. Sterbenz's wife and the child's father claim Mr. Sterbenz's step-son as a dependent for tax purposes in alternating years. For federal tax purposes, Mr. Sterbenz and his wife file joint tax return that lists his wife as an "injured spouse" to shield her portion of the tax refund from being confiscated to repay Mr. Sterbenz's tax liability that pre-dated the marriage. These tax concerns prompted Mr. Sterbenz to leave dependent's off of his claim when he set it up.

On August 9, 2019, Iowa Workforce Development mailed a monetary record to Mr. Sterbenz at his last-known address of record. The monetary record listed the number of dependent's as zero and set the weekly benefit amount at \$481.00, the maximum weekly benefit amount for claimant with zero dependents on the claim. The maximum weekly benefit amount for a

claimant with two dependents is currently \$518.00. The monetary record stated that a challenge to the monetary record must be filed with 10 days of the mailing date of the monetary record.

On August 16 and 17, 2019, Mr. Sterbenz and his wife were away from home camping. At the time the couple departed for their camping trip, the monetary record had not yet arrived at their mailbox. Upon their return from the camping trip on Saturday, August 17, 2019, the monetary record was waiting in the mailbox. Mr. Sterbenz decided that he wanted to add the two minor children to the claim. On Tuesday, August 20, 2019, Mr. Sterbenz went to a local Workforce Development office and spoke with a workforce advisor about changing the number of dependents on the claim. Mr. Sterbenz had decided against contacting Iowa Workforce Development on Monday August 19, 2019 because he was caring for the couple's infant son and did not want to bring the child to the Workforce Development center

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.3-4 provides for calculation of the weekly benefit amount as follows:

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 Administrative Code rule 871-24.2 sets forth the procedure that a would-be unemployment insurance claimant must follow to establish a claim for benefits. Subrule (b)(8) sets forth the

information the claimant must provide regarding the number of dependents and defines who counts, and does not count as a dependent:

(8) Number, name and relationship of any dependents claimed. As used in this subparagraph, "dependent" is defined as: spouse, son or daughter of the claimant, or a dependent of either; stepson or stepdaughter; foster child or child for whom claimant is a legal guardian; brother, sister, stepbrother, stepsister; father or mother of claimant, stepfather or stepmother of the claimant; son or daughter of a brother or sister of the claimant (nephew or niece); brother or sister of the father or mother of the claimant (uncle or aunt); son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the claimant; an individual who lived in the claimant's home as a member of the household for the whole year; cousin.

A "spouse" is defined as an individual who does not earn more than \$120 in gross wages in one week. The reference week for this monetary determination shall be the gross wages earned by the spouse in the calendar week immediately preceding the effective date of the claim.

A "dependent" means an individual who has been or could have been claimed for the preceding tax year on the claimant's income tax return or will be claimed for the current income tax year. The same dependent shall not be claimed on two separate monetarily eligible concurrent established benefit years. An individual cannot claim a spouse as a dependent if the spouse has listed the claimant as a dependent on a current claim.

The monetary record shall constitute a final decision unless newly discovered facts which affect the validity of the original determination or a written request for reconsideration is filed by the individual within ten days of the date of the mailing of the monetary record specifying the grounds of objection to the monetary record. Iowa Admin. Code r. 871-24.9(1)(b).

Unfortunately, Mr. Sterbenz did not make a timely challenge to the monetary record. The 10-day deadline to challenge the number of dependents on the monetary record was August 19, 2019. Mr. Sterbenz elected to wait until August 20, 2019, to contact Iowa Workforce Development about changing the number of dependents on the claim.

DECISION:

The August 21, 2019, reference 02, decision is affirmed. The claimant's request to change the number of dependents on the claim is untimely. The claimant's request to change the number of dependents on the claim is denied.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs