

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MATTHEW J SWANSON
Claimant

E&K OF OMAHA
Employer

APPEAL 19A-UI-08242-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/16/19
Claimant: Appellant (5)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.19(38) – Total, Partial Unemployment

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the October 15, 2019 (reference 02) unemployment insurance decision that found claimant was not eligible for unemployment benefits effective September 15, 2019 due to working the same hours and same wages as in his contract of hire. The parties were properly notified of the hearing. A telephone hearing was held on November 12, 2019. The claimant, Matthew J. Swanson, participated personally. The employer, E&K of Omaha, participated through witness Jason Sloger. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUES:

Is the claimant able to work and available for work effective September 15, 2019?
Was the claimant totally or partially unemployed?
Is the claimant eligible for backdating and/or retroactive benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is employed as a full-time carpenter for this employer. He began working for this employer in August of 2014. As part of his requirement to be employed, claimant was required to attend training related to his work as a carpenter the week of September 23, 2019 through September 27, 2019. He did not perform services and did not earn any wages, holiday pay, or vacation pay the week he was in training. However, claimant failed to timely file his additional claim for benefits and his weekly-continued claim for benefits for the week of September 22, 2019 through September 28, 2019. His additional claim was filed effective October 6, 2019. No weekly-continued claim for benefits was filed for the week-ending September 28, 2019 because his account was not activated.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code section 96.4(3) provides:

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

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. **This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c".**

(emphasis added).

Iowa Code section 96.19(38) provides:

"Total and partial unemployment".

a. An individual shall be deemed **"totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.**

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed **temporarily unemployed** if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, **lack of work** or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

(emphasis added).

In this case, the claimant did not work or earn wages during the week ending September 28, 2019 due to lack of work. Therefore, he was totally unemployed that week. However, claimant failed to file a timely additional claim for benefits and failed to file his weekly-continued claim for benefits for the week-ending September 28, 2019.

Backdating and retroactive benefits are no longer allowed for a situation such as this.

Iowa Admin. Code r. 871—24.2(96) provides:

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

24.2(1) Section 96.6 of the employment security law of Iowa states that claims for benefits shall be made in accordance with such rules as the department prescribes. The department of workforce development accordingly prescribes:

g. No benefit payment shall be allowed until the individual claiming benefits has completed a continued claim online or as otherwise directed by the department.

(1) The weekly continued claim shall be transmitted not earlier than 8 a.m. on the Sunday following the Saturday of the weekly reporting period and **not later than close of business on the Friday following the weekly reporting period.**

(2) An individual claiming benefits using the weekly continued claim system shall personally answer and record such claim on the system unless the individual is disabled and has received prior approval from the department.

(3) The individual shall set forth the following:

1. That the individual continues the claim for benefits;
2. That except as otherwise indicated, during the period covered by the claim, the individual was fully or partially unemployed, earned no gross wages and received no benefits, was able to work and available for work;
3. That the individual indicates the number of employers contacted for work, the contact information for each employer contacted, and the result of the contact;
4. That the individual knows the law provides penalties for false statements in connection with the claim;
5. That the individual has reported any job offer received during the period covered by the claim;
6. That the individual understands the individual's responsibility to review the individual's claim records to ensure there is no delay in filing the individual's weekly claim to remain in continuous reporting status. Failure to file claims each week will require a claimant to submit a claim application to reactivate the claim;
7. Other information required by the department.

(emphasis added).

Iowa Admin. Code 871-24.2(1)h provides:

Effective starting date for the benefit year.

(1) Filing for benefits shall be effective as of Sunday of the current calendar week in which, subsequent to the individual's separation from work, an individual files a claim for benefits.

(2) The claim **may only be backdated prior to the first day of the calendar week in which the claimant does report and file a claim if the claimant filed an interstate claim against another state which has been determined as ineligible.**

(3) When the benefit year expires on any day but Saturday, the effective date of the new claim is the Sunday of the current week in which the claim is filed even though it may overlap into the old benefit year up to six days. However, backdating shall not be allowed at the change of a calendar quarter if the backdating would cause an overlap of the same quarter in two base periods. When the overlap situation occurs, the effective date of the

new claim may be postdated up to six days. If the claimant has benefits remaining on the old claim, the claimant may be eligible for benefits for that period by extending the old benefit year up to six days.

(emphasis added).

As such, while the claimant may have been temporarily unemployed for the week-ending September 28, 2019, he did not file his additional claim and weekly-continued claim in a timely manner. As such, benefits are denied for the period of September 22, 2019 through September 28, 2019 due to his failure to file a weekly-continued claim for benefits that week.

DECISION:

The October 15, 2019 (reference 02) unemployment insurance decision is modified with no change in effect. The claimant was temporarily totally unemployed for the week-ending September 28, 2019 due to lack of work, but failed to file a timely additional claim and failed to file his weekly-continued claim for benefits for the week-ending September 28, 2019. No good cause reason to backdate the claim exists. No retroactive benefits are allowed. Benefits are denied for the period of September 22, 2019 through September 28, 2019.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/scn