

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

MICHAEL BENECKE
Claimant

APPEAL NO. 23A-UI-04691-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 04/23/23
Claimant: Appellant (2R)**

Iowa Code Section 96.3(4) – Monetary Determination

STATEMENT OF THE CASE:

On May 5, 2023, Michael Benecke (claimant) filed a timely appeal from the monetary determination that was mailed to the claimant on May 21, 2023. After due notice was issued, a hearing was held on May 23, 2023. The claimant participated. Exhibit A, the online appeal, was received into evidence. The administrative law judge took official notice of the following Iowa Workforce Development administrative records: the monetary record mailed May 1, 2023, DBRO, WAGEA, WAGEC, IBIQ. The administrative law judge took official notice of relevant information available on the Iowa Secretary of State’s Business Entity Search database, <https://sos.iowa.gov/search/business/search>.

The administrative law judge left the hearing record open for the limited purpose of allowing the claimant to submit a W2 for 2022 and payroll paystubs for the beginning of 2022 to the present. The claimant submitted a 2021 W2, a 2022 W2, and paystubs for the period in question. These materials submitted by the claimant were received into the hearing record as Exhibits B, C and D respectively.

In drafting this decision, it was necessary for the administrative law judge to take official notice of the www.myiowauai.org information corresponding to FEIN/EIN 90-0978728.

ISSUES:

Whether the monetary determination mailed to the claimant on May 1, 2023 was in all aspects correct.

Whether the claimant meets the minimum base period earnings requirements to be monetarily eligible for benefits for the period beginning April 23, 2023.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Michael Benecke (claimant attempted to establish an original claim for benefits effective April 23, 2023. On May 1, 2023, Iowa Workforce Development mailed a monetary record (green paper) to the claimant that stated “BENEFITS CANNOT BE PAID ON THIS CLAIM BECAUSE

THERE WERE NO WAGES REPORTED FOR YOUR SOCIAL SECURITY NUMBER.” The monetary record referenced the relevant base period as the four quarters of 2022, January 1, 2022 through December 31, 2022. The monetary record and Iowa Workforce Development quarterly wage report records (WAGE-A and WAGE-C) indicate that no employer reported wages to Iowa Workforce Development as wages paid to the claimant during the base period quarters or for the recent quarter, the first quarter of 2023. The monetary record accurately reflected the claimant’s number of dependents as zero. On May 5, 2023, the claimant filed a timely appeal from the May 1, 2023 monetary record determination.

The claimant was most recently employed as full-time, salaried General Manager for a Firehouse Subs restaurant located at 5008 Sergeant Road in Sioux City, Iowa. The claimant has had no other employment since the beginning of 2022. The claimant started the Firehouse Subs employment in November 2021 as an assistant manager. The claimant’s initial wage was \$14.00 an hour. The claimant became a salaried employee six months into the employment. The claimant was paid biweekly. The claimant’s final salary was \$45,000.00 annually. The claimant separated from the employment on April 21, 2023. The claimant characterizes the separation as involuntary.

The name of the employer’s company is Engelstad FHS Two, L.L.C. d/b/a Firehouse Subs. The claimant states that Eric Engelstad and Stephanie Engelstad, husband and wife, are the business owners. The employer provided the claimant a W2 tax form for 2022. See Exhibit C. The employer address on the W2 is as follows:

ENGELSTAD FHS TWO LLC
FIREHOUSE SUBS
6977 OAKRIDGE CT
SHAKOPEE MN 55379

The employer’s federal employer identification number (FEIN/EIN) set forth on the W2 is 90-0978728. That EIN corresponds to Iowa Workforce Development employer account number 543545 assigned to Engelstad FHS One, L.L.C. doing business as Engelstad FHS Two, L.L.C. See www.myiowaui.org.

The W2 indicates 2022 wages totaling \$41,084.38.

The claimant has payroll check stubs for the entire period of the employment. The claimant provided pay stubs for consecutive pay periods between December 27, 2021 through April 21, 2023. See Exhibit D. The pay stubs reflect wages paid to the claimant on the following dates for the following amounts:

<u>Pay date</u>	<u>Gross Wages Paid</u>
1/14/22	1,538.46
1/28/22	1,538.45
2/11/22	1,538.45
2/25/22	1,538.45
3/11/22	1,538.45
3/25/22	1,538.45
4/8/22	1,538.45
4/22/22	1,538.46
5/6/22	1,538.45
5/20/22	1,538.45

6/3/22	1,538.45
6/17/22	1,538.45
7/1/22	1,538.45
7/15/22	1,538.46
7/29/22	1,538.45
8/12/22	1,538.45
8/26/22	1,538.45
9/9/22	1,538.45
9/23/22	1,538.45
10/7/22	1,538.45
10/21/22	1,538.46
11/4/22	2,238.45
11/18/22	1,538.45
12/2/22	1,538.45
12/16/22	1,730.77
12/30/22	1,730.77
1/13/23	1,730.77
1/27/23	1,730.77
2/10/23	1,730.77
2/24/23	1,038.24
3/10/23	1,730.77
3/24/23	1,730.77
4/7/23	1,730.77
4/21/23	1,730.77

The pay stubs reflect quarterly wages as follows:

<u>Quarter</u>	<u>Gross Quarterly Wages Paid</u>
2022/1	9,230.71
2022/2	9,230.71
2022/3	10,769.16
2022/4	11,853.80
2023/1	9,692.09
2023/2	3,461.54

Iowa Workforce Development records (IBIQ) reflect no record of wages reported to Minnesota, Nebraska or South Dakota for the base period quarters or more recently.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.4(4)(a) and (b) sets forth the minimum base period earnings requirements a claimant must meet in order to be “monetarily eligible” for unemployment insurance benefits, as follows:

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

a. 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 paragraph 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.

b. For an individual who does not have sufficient wages in the base period, as defined in section 96.19, to otherwise qualify for benefits pursuant to this subsection, the individual's base period shall be the last four completed calendar quarters immediately preceding the first day of the individual's benefit year if such period qualifies the individual for benefits under this subsection.

The 2022 Unemployment Insurance Claimant Handbook succinctly states the minimum earnings requirements as follows:

To be eligible for benefits, you must have:

- Been paid wages by covered employers in at least two quarters of the base period
- Total base period wages of at least 1.25 times the wages earned in the highest base period quarter
- Wages of at least \$1890 in one quarter and at least \$950 in a different quarter (program year July 3, 2022 to July 1, 2023).

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.

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).

The claimant made a timely challenge to the monetary record.

The evidence in the record establishes that the claimant met the base period minimum earnings requirements to be monetarily eligible for unemployment insurance benefits on an Iowa claim. The claimant was paid wages in all four base period quarters. The total base period wages well exceeded .25 times the wages earned in the highest base period quarter. The claimant met both the high quarter and low quarter requirement.

The monetary record that Iowa Workforce Development mailed to the claimant on May 1, 2023 accurately stated the number of dependents as zero, but erroneously excluded the base period employment record, including the employer name, employer account number, base period wages for each quarter, and the wage credits earned through the base period employment. In addition, the monetary record erroneously omitted a weekly benefit amount and maximum amount.

This matter will be remanded to Iowa Workforce Development for issuance of a new monetary record that includes the base period wages referenced above herein and for further action necessary to determine the claimant's eligibility for unemployment insurance benefits on the Iowa claim. As referenced hereinabove the employer account number in question is 543545 assigned to Engelstad FHS One, L.L.C. doing business as Engelstad FHS Two, L.L.C. See www.myiowaui.org.

DECISION:

The claimant met the base period minimum earnings requirements and is monetarily eligible for benefits in connection with the Iowa original claim that was effective April 23, 2023. The claimant must meet all other eligibility requirements.

The monetary record mailed to the claimant on May 1, 2023 accurately stated the number of dependents as zero, but erroneously excluded the base period employment record, including the employer name, employer account number, base period wages for each quarter, and the wage credits earned through the base period employment. In addition, the monetary record erroneously omitted a weekly benefit amount and maximum amount.

REMAND:

This matter is REMANDED to Iowa Workforce Development Benefits Bureau for issuance of a new monetary record that includes the base period wages referenced above herein, and the appropriate wage credits, weekly benefit amount and maximum benefit amount.

This matter is also REMANDED to IWD Benefits Bureau for further action necessary to determine the claimant's eligibility for unemployment insurance benefits on the Iowa claim.

As referenced hereinabove the employer account number in question is 543545 assigned to Engelstad FHS One, L.L.C. doing business as Engelstad FHS Two, L.L.C. See www.myiowauui.org.



James E. Timberland
Administrative Law Judge

May 31, 2023
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.