

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**WYATT L KERN
830 MAXWELL ST
WATERLOO IA 50701**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**Appeal Number: 04A-UI-03577-AT
OC: 02-22-04 R: 03
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

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.

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.

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.3-4 – Dependents

STATEMENT OF THE CASE:

Wyatt L. Kern filed a timely appeal from an unemployment insurance decision dated March 19, 2004 reference 04 which denied his request to add his four children as dependents to his unemployment insurance claim filed effective February 22, 2004. After due notice was issued, a telephone hearing was held April 19, 2004 with Mr. Kern participating.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Wyatt L. Kern is the father of Annette Kern, Wyatt Kern Jr., Levi Kern and Lucas Kern. Mr. Kern claimed the children as dependents for

income tax purposes when filing his tax returns for 2003. The children's mother filed a claim for unemployment insurance benefits in May of 2003. She claimed the children as dependents at that time. Although she has exhausted all benefits, her benefit year does not expire until May of 2004.

REASONING AND CONCLUSIONS OF LAW:

The question is whether Mr. Kern may claim his children as dependents for his unemployment insurance claim even though their mother had done so in a claim filed in May of 2003. He cannot.

Iowa Code Section 96.3-4 provides:

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.

Although the statute is silent as to whether both parents may simultaneously claim children as dependents for unemployment insurance purposes, the question is answered in the Iowa Administrative Code, 871 IAC 24.2(1)b(8). The rule reads in pertinent part, "the same dependent shall not be claimed on two separate eligible concurrent established benefit years." Since Mrs. Kern filed her claim for benefits first, Mr. Kern cannot claim them during any benefit year he establishes while Mrs. Kern's benefit year remains open.

If the Kerns experience seasonal layoffs, and a similar situation may face them in the future, they should decide in advance whether it is more advantageous to them to have all children claimed on one unemployment insurance claim or the other or whether to split the children between the two unemployment insurance claims.

DECISION:

The unemployment insurance decision dated March 19, 2004 reference 04 is affirmed. The claimant's request to add his children as dependents to his present benefit year is denied.

sb/b