

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**RILLA M ARNOLD**  
Claimant

**APPEAL 15A-UI-13449-DL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 11/08/15  
Claimant: Appellant (2R)**

Iowa Code § 96.4(4)a-c – Monetary Eligibility and Subsequent Benefit Year  
Iowa Code § 96.6(1) – Filing Claims  
Iowa Admin. Code r. 871-24.2(4)d(1) – Cancellation of Unemployment Insurance Claim

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the December 4, 2015, (reference 01), unemployment insurance decision that denied the request to add wages to the third quarter of 2015, which left her monetarily ineligible for benefits. After due notice was issued, a telephone conference hearing was held on December 30, 2015. Claimant participated. Claimant's Exhibit A was received.

**ISSUES:**

Can wages be added to the third quarter of 2015?

Is the claimant monetarily eligible for benefits effective November 8, 2015?

Can the claim be cancelled and refiled in the first quarter of 2016?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: On September 25, 2015, Five Star Cooperative paid claimant insured wages in the gross amount of \$1240.75. Of that amount, \$486.00 already appears in the monetary record for the third quarter of 2015. Claimant was also paid gross insured wages of \$4294.00 during the fourth quarter of 2014. (Claimant's Exhibit A) She filed her claim effective November 8, 2015, at the Mason City Iowa Works office with advice that if she did so and had earned sufficient wages in September 2015, she would be eligible for benefits. Whoever advised her about this did not apparently consider that the third quarter of 2015 would be a lag quarter and would not be included in her base period for monetary eligibility purposes.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant does have sufficient wages in the base period for benefit eligibility.

Iowa Code § 96.4(4) provides:

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

4. 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 subsection 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.

If the individual has drawn benefits in any benefit year, the individual must during or subsequent to that year, work in and be paid wages for insured work totaling at least two hundred fifty dollars, as a condition to receive benefits in the next benefit year.

Iowa Code § 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.

The claimant has presented sufficient and credible evidence to establish that insured gross wages totaling \$1240.00, including \$486.00 already reported, were paid during the third quarter of 2015, on September 27, 2015, those wages must be added to the monetary record in that quarter.

Iowa Admin. Code r. 871-24.2(4)d provides:

Cancellation of unemployment insurance claim.

d. Other valid reasons for cancellation whether or not ten-day protest period has expired.

(1) The individual has an unexpired unemployment insurance claim in another state and is eligible for a remaining balance of benefits.

(2) The individual received erroneous information regarding entitlement or eligibility to unemployment insurance benefits from an employee of the department.

(3) The individual has an unexpired railroad unemployment insurance claim with a remaining benefit balance which was filed prior to the unemployment insurance claim.

(4) The individual exercises the option to cancel a combined wage claim within the ten days allowed by federal regulation.

(5) The individual has previously filed a military claim in another state or territory. Wages erroneously assigned to Iowa must be deleted and an interstate claim must be filed.

(6) Federal wages have previously been assigned to another state or territory or are assignable to another state or territory under federal regulation. Federal wages erroneously assigned to Iowa must be deleted and the appropriate type of claim filed.

(7) The Iowa wages are erroneous and are deleted and the wages from one other state were used, the claim shall be canceled and the wages returned to the transferring state.

Iowa Admin. Code r. 871-24.2(4)c provides:

Cancellation of unemployment insurance claim.

c. Cancellation requests within the ten-day protest period. The claims section, upon review of the timely request and before payment is made, may cancel the claim for the following reasons:

(1) The individual found employment or returned to regular employment within the protest period.

(2) Cancellation would allow the individual to refile at the change of a calendar quarter to obtain an increase in the weekly or maximum benefit amount or the individual would receive more entitlement from another state.

(3) The individual filed a claim in good faith under the assumption of being separated and no actual separation occurred.

(4) The individual did not want to establish a benefit year because of eligibility for a low weekly or maximum benefit amount.

Iowa Admin. Code r. 871-24.2(1)h(1), (2) and (3) provide:

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

(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:

h. 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 reports in person at a workforce development center and registers for work in accordance with paragraph "a" of this rule.

(2) The claim may be backdated prior to the first day of the calendar week in which the claimant does report and file a claim for the following reasons:

Backdated prior to the week in which the individual reported if the individual presents to the department sufficient grounds to justify or excuse the delay;

There is scheduled filing in the following week because of a mass layoff;

The failure of the department to recognize the expiration of the claimant's previous benefit year;

The individual is given incorrect advice by a workforce development employee;

The claimant filed an interstate claim against another state which has been determined as ineligible;

Failure on the part of the employer to comply with the provisions of the law or of these rules;

Coercion or intimidation exercised by the employer to prevent the prompt filing of such claim;

Failure of the department to discharge its responsibilities promptly in connection with such claim, the department shall extend the period during which such claim may be filed to a date which shall be not less than one week after the individual has received appropriate notice of potential rights to benefits, provided, that no such claim may be

filed after the 13 weeks subsequent to the end of the benefit year during which the week of unemployment occurred. In the event continuous jurisdiction is exercised under the provisions of the law, the department may, in its discretion, extend the period during which claims, with respect to week of unemployment affected by such redetermination, may be filed.

(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 the 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.

Since claimant received incorrect advice about her eligibility in the claim year effective November 8, 2015, her appeal on this issue is also considered a timely appeal of the monetary determination, and she shall be allowed to cancel the claim pursuant to Iowa Admin. Code r. 871-24.2(4)c if so desired and if necessary so that she may establish another base period during the first quarter of 2016, that would render her monetarily eligible to receive benefits.

**DECISION:**

The unemployment insurance decision dated December 4, 2015, reference 01, denying addition of wage credits is reversed. The wages outlined above shall be included in the monetary record. The claimant's request to cancel the November 8, 2015 claim, establish a new claim date in the first quarter, 2016, is granted.

**REMAND:** The unrecorded wage issue delineated in the findings of fact is remanded to the Tax Section of Iowa Workforce Development for addition of the wages according to the evidence contained in Claimant's Exhibit A.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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