

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DARLENE L PELKEY
Claimant

APPEAL 19O-UI-04312-DG-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 03/17/19
Claimant: Appellant (1R)

Iowa Code § 96.4(4) – Monetary Eligibility and Subsequent Benefit Year
Iowa Code § 96.3(4) – Determination of Benefits

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 20, 2019, monetary determination. After due notice was issued, a telephone conference hearing was held on June 24, 2019. Claimant participated. Claimant's Exhibit A was admitted.

ISSUE:

Is the monetary record dated March 20, 2019, correct?
Is the claimant monetarily eligible for benefits effective March 17, 2019?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The base period for the claim year effective March 17, 2019, covers the fourth quarter of 2017, and the first, second and third quarters of 2018.

Claimant presented evidence of wages in the second, third and fourth quarter of 2018. (Claimant's Exhibit A) Those wages were paid from a different account, and employer did not withhold taxes from those wages. Employer told claimant she would be receiving a 1099 for those wages. Those wages appear to be for independent contractor work or self-employment. The wages listed in the monetary record for those quarters are therefore correct.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the monetary record is correct.

Iowa Code section 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 Admin. Code r. 871-24.1(11) provides:

Base period. The period of time in which the amount of wages paid to an individual in insured work which determines an individual's eligibility for, and the amount and duration of, benefits. The base period consists of the first four of the last five completed calendar quarters immediately preceding the calendar quarter in which the individual's claim for benefits is effective with the following exception. The department shall exclude three or more calendar quarters from the individual's base period in which the individual received workers' compensation or indemnity insurance benefits and substitute consecutive calendar quarters immediately preceding the base period in which the individual did not receive workers' compensation or indemnity insurance benefits. This exception applies under the following conditions:

- a. The individual did not work in and receive wages from insured work for three calendar quarters of the base period, or
- b. The individual did not work in and receive wages from insured work for two calendar quarters and lacked qualifying wages from insured work to establish a valid claim for benefits during another quarter of the base period.

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 "a", 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's monetary record shall be re-evaluated to determine if the employer reported the wages earned by the claimant to a state other than Iowa, if they were not reported then why those wages were not reported, and additional wage information is to be obtained to determine what wages were paid in each quarter to determine if the claimant is monetarily eligible.

DECISION:

The March 20, 2019, monetary record is affirmed pending the outcome of the remanded issues.

REMAND: The issue of unrecorded wages with employer Chad Behrens LLC (including Burke Electric and Stockyards Bar and Grill) is remanded to the Tax Bureau of Iowa Workforce Development for a wage investigation.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/scn