

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRITTANY STOMMEN
Claimant

APPEAL 21A-UI-02581-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA
Employer

OC: 10/25/20
Claimant: Appellant (1)

Iowa Code § 96.1A(37) – Total, Partial, and Temporary Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Employed at Same Hours and Wages
Iowa Code § 96.6(1) – Filing Claims
Iowa Admin. Code r. 871-24.2(1)h(1), (2) – Backdating

STATEMENT OF THE CASE:

On January 4, 2021, the claimant, Brittany Stommen, filed an appeal from the December 23, 2020 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was still employed by the employer The University of Iowa at the same hours and wages as contemplated in the contract of hire. The parties were properly notified of the hearing. A telephonic hearing was held on March 8, 2021. The claimant, Brittany Stommen, participated. The employer, The University of Iowa, participated through Jessica Wade, HR Business Analyst. No exhibits were admitted. The administrative law judge took official notice of the administrative record. During the hearing, the parties agreed to waive notice on the issue of whether claimant Brittany Stommen's claim could be backdated.

ISSUES:

May Iowa Workforce Development backdate the claim prior to October 25, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as a radiation therapist, beginning July 9, 2018. Claimant is still employed with this employer.

During 2020, the employer asked all employees of University of Iowa Hospitals and Clinics to either take a two-week furlough or to give back vacation hours due to a budget cost-savings measure as a result of COVID-19. Claimant opted to take a two-week furlough. She took her two weeks of furlough during the weeks of August 23, 2020, and August 30, 2020. Immediately prior to her furlough, she was on protected FMLA leave but was receiving pay.

Claimant did not file her unemployment insurance claim until the week of October 25, 2020. She explained that she did not initially know that she could receive unemployment insurance

benefits for the furlough weeks. Later, when talking to some coworkers, she learned about the ability to file for benefits. She now seeks to backdate her claim to the week of August 23, 2020.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.6(1) provides:

1. Filing. Claims for benefits shall be made in accordance with such regulations as the department may prescribe.

Iowa Admin. Code r. 871-24.2(1)h(1) and (2) 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 files a claim for benefits.

(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:

1. The failure of the department to recognize the expiration of the claimant's previous benefit year;
2. The claimant filed an interstate claim against another state which has been determined as ineligible.

After an agency and legislative rulemaking process, effective July 12, 2017, Iowa Admin. Code r. 871-24.2(1)h(1) and (2) allows backdating for only the two reasons cited above. Neither of those reasons applies in this case. In this case, claimant is seeking backdating because she simply was not aware that unemployment insurance benefits were available to her. Ignorance is not valid grounds for backdating. Accordingly, the backdating request is denied.

Iowa Code section 96.1A(37) 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.

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 96.1A, subsection 37, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. R. 871-24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis difference from the contract for hire, such claimant cannot be considered partially unemployed.

Iowa Code section 96.7(2)a(2) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against

the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

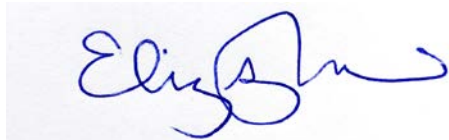
(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

From September 7, 2020, forward, claimant has either been on protected paid leave status or has been working for the employer. Under either scenario, she qualifies as being fully employed. Thus, claimant has not been totally, partially, or temporarily unemployed since opening her claim effective October 25, 2020, and benefits must be denied.

DECISION:

The December 23, 2020 (reference 01) unemployment insurance decision is affirmed. Claimant is still employed by the employer and is not eligible for benefits effective October 25, 2020.



Elizabeth A. Johnson
Administrative Law Judge
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March 11, 2021
Decision Dated and Mailed

lj/scn