

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

JAMES W COPPOC

Claimant

and

AMES COMM SCHOOL DIST

Employer

HEARING NUMBER: 18BUI-07024

**EMPLOYMENT APPEAL BOARD
DECISION**

SECTION: 96.4-5, 24.52-6

DECISION

FINDINGS OF FACT:

The administrative law judge issued a decision in this matter denying the Claimant the ability to draw on wage credits with Ames Community School District over the summer break. The Claimant has appealed. Since the temporary inability to draw on Ames Community School District wage credits does not affect the weekly benefit amount, and does not affect the maximum benefit amount beyond the end of the summer, the decision has made no difference to either party.

REASONING AND CONCLUSIONS OF LAW:

Official Notice: Iowa Code section 17A.14 provides:

Rules of evidence -- official notice.

In contested cases: ...

4. Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the agency. Parties shall be notified at the earliest practicable time, either before or during the hearing, or by reference in preliminary reports, preliminary decisions or otherwise, of the facts proposed to be noticed and their source, including any staff memoranda or data, and the parties shall be afforded an opportunity to contest such facts before the decision is announced unless the agency determines as part of the record or decision that fairness to the parties does not require an opportunity to contest such facts.

Under the rules of court the matters of which judicial notice may be taken are:

Rule 5.201 Judicial notice of adjudicative facts.

a. Scope of rule. This rule governs only judicial notice of adjudicative facts.

b. Kinds of facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

Iowa Rule of Evidence 5.201.

The Board has reviewed the claim history, protest history, and other steps in the agency process. We have done this by consulting the records of Iowa Workforce Development that we are authorized to access. We have taken official notice of the records because those records are a "sourc[e] whose accuracy cannot reasonably be questioned." I. R. Evid. 5.201. Further, the meaning of these records are within the "the specialized knowledge of the agency..." We need not give notice to these parties that we intend to take this notice since "fairness to the parties does not require an opportunity to contest such facts." Iowa Code §17A.14. This is true because there really is no point to contesting the timing and effect of these records. The agency is also allowed to rely on "[t]he agency's experience, technical competence, and specialized knowledge..." when evaluating the evidence. Iowa Code §17A.14(5). Finally we note that taking notice on appeal is not unusual. I. R. Evid. 5.201(f) ("Judicial notice may be taken at any stage of the proceeding.")

Appellant Must Be Aggrieved: Pursuant to 486 IAC 3.1(2), "[a]ny person aggrieved by a job service decision of an administrative law judge may appeal to the employment appeal board" The Employment Appeal Board interprets an aggrieved person to be one who receives an unfavorable decision from the administrative law judge. Here the decision of the administrative law judge makes no difference to the Claimant, and actually benefits the employer.

What This Decision Does: To understand the non-effect of this matter on the Claimant first two things must be clear: (1) the Claimant is disqualified from drawing on the Ames Community School District credits because of this "between years" denial, and (2) this disqualification only lasts until the academic year starts up again. So over the summer the Claimant may not draw on ACSD credits but once the summer ends he can draw on those credits again – like it never even happened. The first limitation, that of simply removing the ACSD credits follows from the code: "Benefits **based on service** in an instructional, research, or principal administrative capacity" are denied. Iowa Code §96.4(5)(a)(emphasis added). Likewise the temporary nature of the inability to draw on those credits: the benefits "shall not be paid to an individual **for any week** of unemployment which begins **during the period** between two successive academic years..." Iowa Code §96.4(5)(a)(emphasis added). Given these facts, the claimant's wage history, and the way benefits are calculated leads to one inescapable conclusion: this decision has no effect on the Claimant.

How Benefits Are Calculated: The Code of Iowa sets out the calculation for the weekly benefit amount and a maximum annual benefit amount. The weekly benefit amount is “[t]he full amount of benefits a claimant is entitled to receive for a week of total unemployment.” 871 IAC 24.1(13)(c). The weekly benefit amount depends on the number of dependents, but may not exceed a specified state weekly maximum:

# of Dependents	Weekly Benefit Amount Shall equal the following fraction of high quarter wages	Subject to the following maximum % of the statewide average weekly wage
Zero	1/23	53%
1	1/22	55%
2	1/21	57%
3	1/20	60%
>3	1/19	65%

Iowa Code §96.3(4). Note that **the weekly benefit amount depends entirely on the amount of wages earned in the high quarter of the base period.**

The Claimant claimed for 1 dependent. By the statutory chart he thus gets a weekly benefit amount of, at most, a 22nd of his high quarter wages subject to a cap of 55% of the statewide average weekly wage.

If we examine his wage credits we can directly calculate his weekly benefit amount:

Employer	1st Quarter of 2017 Earnings	2nd Quarter of 2017 Earnings	3rd Quarter of 2017 Earnings	4th Quarter of 2017 Earnings
Ames Schools	0.00	0.00	904.84	2996.92
ISU	13479.24	16579.24	6813.35	0.00

Total Wages: \$40,773.59

Credits (=1/3 wages) : \$13,591.20

So the second quarter of 2017, where there are no ACSD credits, is the high quarter. With one dependent we take a 22nd to get \$753.60. But this is not the Claimant’s weekly benefit amount because the Code provides that for one dependent the cap is 55% of the statewide average weekly wage applicable to the claim in question. Here the applicable statewide weekly average (rounded to the nearest 10) is \$860. Fifty-five percent of this is \$473. Thus based on the high quarter earnings of \$16,579.24, the single dependent, and the Code we automatically generate a weekly benefit amount (**WBA**) of \$473. This is what the Claimant was notified his WBA would be when he filed his claim. This is what he has collected every week for 10 weeks.

So now, let us delete off the ACSD credits. Right off we see that the high quarter was the 2nd quarter of 2017 and that there are no ACSD credits that quarter. So deleting them off does not affect the high quarter, and thus cannot affect the WBA. But let's do it anyway:

Employer	1st Quarter of 2017 Earnings	2nd Quarter of 2017 Earnings	3rd Quarter of 2017 Earnings	4th Quarter of 2017 Earnings
Ames Schools	0.00	0.00	0.00	0.00
ISU	13479.24	16579.24	6813.35	0.00

Total Wages: \$36,871.83

Credits (1/3 wages) : \$12,290.61

So the second quarter is again the high quarter. With one dependent we take a 22nd to still get \$753.60, and we still apply the same weekly cap and we still get a WBA of \$473. So what effect on the WBA do we find from deleting off these credits? Answer: none at all.

If the Claimant would like to confirm this he can look at the "Notice of Unemployment Insurance Fact Finding Interview" which he attached to his *Motion to Admit Additional Evidence*. The figures in the middle there show his wages for each employer. They reflect the two 2017 quarters of wages from ACSD, and yet still list "WBA – 473." The same amount is listed on the "Notice of Claim" which is an exhibit in this case, and which was generated at time when the ACSD credits were still on the claim. Thus the Claimant's WBA *with* the ACSD credits is, as we demonstrated above, \$473. Now Claimant has been filing claims *after* the ACSD credits were deleted off, and he has been paid \$473 every week he actually filed a weekly claim. So with credits or without it's still \$473 – just as we demonstrated above.

So then let's talk about the maximum benefit amount (**MBA**). An unemployment claimant cannot collect benefits forever. Every claim has a maximum amount of money that will be paid out over the course of the 365 days following the filing of the initial claim. The money is paid in the full amount claimed (the full WBA if no wages are reported) until that maximum is reached. So what is the maximum? The maximum annual benefit amount is "[t]he maximum total amount of benefits an individual may receive during the individual's benefit year." 871 IAC 24.1(75). This benefit **year** maximum is the lesser of the wage credits actually accrued to the individual, or 26 times the individual's weekly benefit amount. Iowa Code §96.3(5). Wage credits are "one-third of the wages for insured work paid to the individual during the individual's base period." Iowa Code §96.3(5).

Thus the code tells us that the maximum benefits that can be collected on a given initial claim is the lesser of: (1) wage credits, and (2) twenty-six times the WBA. And wage credits is just set to 1/3 of wages in the base period.

So then, let us first look at the numbers with the ACSD credits in. As indicated in the chart the wage credits with both employers added in is \$13,591.20. But 26 times \$473 is \$12,298. So since the lesser figure gives the maximum benefit amount the MBA for the claim, with both employers, is \$12,298, i.e., 26 weeks of full benefits.

OK, so now let us first look at the numbers with the ACSD credits removed. As indicated in the chart the wage credits with only ISU \$12,290.61. But 26 times \$473 is \$12,298. So since the lesser figure gives the maximum benefit amount the MBA for the claim, with both employers, is \$12,290.61, i.e., the ISU wage credits.

So thus far we can see that the loss of the ACSD credits has no effect on the weekly benefit amount. This is why the Claimant has drawn 10 weeks of full benefits over the summer. We can see that the only conceivable effect on the claimant is that his maximum benefit amount goes from \$12,298 to \$12,290.61 – a difference of \$7.39. We can imagine that the Employer at this point is tempted to send the Claimant a sawbuck and call it a day. But even this is not necessary.

As we pointed out, once the school year starts again the Claimant will once again be able to draw on ACSD credits, assuming he is for some reason unemployed and otherwise eligible. The “between years” loss of the ACSD credits lasts only as long as the summer of 2018, alas now gone. So the Claimant should be able to draw once again on the ACSD credits. His MBA should now be returned to \$12,298. He should get the \$7.39 added back on. Turns out, the soonest way this miniscule reduction would affect him would be if he collected 25 weeks at \$473. Then in his 26th and final week he would have \$465.61 remaining to claim without the ACSD credits, and \$473 with the ACSD credits. So only in the 26th and final week of benefits, at the soonest, could the \$7.39 reduction in the MBA affect this Claimant. But he opened this claim on May 27, 2018. Drawing benefits as quickly as possible the fastest he could get to that final week would be in late November. School will be in session. The ACSD credits will be back on his claim. He cannot possibly reach, and did not reach, that final 26th week during the summer. Summer is, as so often seems to be the case, far too short.

The Upshot: The Administrative Law Judge’s decision temporarily reduced the Claimant’s MBA by \$7.39 during a period of time during which it was impossible for the reduction to be reflected in benefits paid to the claimant. The \$7.39 is restored now that the school year has commenced, and since the claim is far from exhausted our affirmance or reversal of the Administrative Law Judge either way would have no effect on the Claimant at all.

In particular the Claimant filed an initial claim on May 27, 2018. Apparently he failed to file a weekly request for payment until the week ending June 30, 2018. We do not know why this is but he seems to have requested to backdate to the week ending June 9, but this request was denied and not appealed to this Board. See 18A-UI-07058. Since this decision was *not* appealed to us, it remains in force regardless of the outcome of the current appeal. Starting on the week ending June 30 the Claimant was paid benefits in the amount of \$473 for the rest of July and August. He has more than \$473 remaining on his claim at this time. Thus he did not reach his reduced MBA over the summer. His MBA should now be restored, and the Claimant has experienced no adverse effects as a result of the decision in case 07024. This is because, as we have explained, it was not possible that the Claimant was *ever* going to experience an adverse effect on benefits as a result of the Workforce’s decision in case 07024. In short, if we were to reverse the Administrative Law Judge the Claimant would be due more benefits neither now nor in the future.

Reviewing Workforce computer records it looks like the ACSD credits do not appear to have been added back in yet. This happens from time to time because the end-of-summer addition of the credits is manual, not automatic. But the credits should be added back in for any future weekly claims. If the Claimant, for some reason, remains unemployed, he should contact Iowa Workforce (not the Board), show them this decision if necessary, and ask that the deleted credits be restored now that the summer is over. So far he has not been affected. But if he ever gets to that final check, it could cost him to the tune of \$7.39 if he does not get Iowa Workforce to update the computer so the credits are

added back in. This is a ministerial issue, not a legal one. The credits should be back on, and if they are not, the Claimant should notify Workforce so they can make the update, at least if he ever reaches that 26th week of claims.

Meanwhile, and finally, if the Claimant has this fall become separated from the Ames Community School District, that issue is not before us. One of the parties should notify Iowa Workforce of any such post-hearing loss of employment so that the Benefits Bureau can determine if a disqualification based on a separation should be imposed. *C.f.* 871 IAC 24.25(11)(a) & 24.25(37). But today that issue, if there be any such issue, is not before us and the Claimant is not aggrieved by the adjudication he now appeals. For this reason the Claimant's appeal must be and is dismissed.

DECISION:

The appeal of the Claimant is **DISMISSED** because he has not been aggrieved by the decision under appeal. The decision of the administrative law judge remains in full force and effect.

Kim D. Schmett

Ashley R. Koopmans

James M. Strohman

RRA/fnv