

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

HEATHER M WEBER

Claimant

HEARING NUMBER: 15B-UI-07238

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.3-4

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds the administrative law judge's decision is correct. With the following modification, the administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED** with the following **MODIFICATION**:

FINDINGS OF FACT:

The administrative law judge's Findings of Fact are adopted by the Board as its own, with the following additions:

The Claimant's claim for benefits was found monetarily eligible based on the Alternate Base Period.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge's Reasoning and Conclusions of Law are adopted by the Board as its own, with the following additions:

For benefit qualification purposes the rules provide:

23.2(2) Wages paid. Wages for employment during a calendar quarter consist of wages paid during the calendar quarter. **Wages earned but not paid during the calendar quarter shall be considered as wages for employment in the quarter paid.** The Employer's Contribution and Payroll Report, Form 65-5300, shall be used as prima facie evidence of when the wages were paid. If the wages are not listed on the 65-5300, they shall be considered as paid:

- a. On the date appearing on the check.
- b. On the date appearing on the notice of direct deposit.
- c. On the date the employee received the cash payment.
- d. On the date the employee received any other type of payment in lieu of cash.

This is for deciding if a Claimant is monetarily eligible, and for determining the base period employers, and for determining the benefit amount. For those purposes what counts is when the check is cut, not when the work was done. The reason for this is obviously in part because these calculations are based on wage records reported by Iowa Employers on a quarterly basis. Since Employer payroll records are concerned with when checks get cut, monetary determinations are made on a "when paid" not a "when earned" basis. 871 IAC 23.2(2). Although the Administrative Law Judge states that rule 3.2(2) is now located at 32.2(2), there is no chapter 32 and this appears to be a typographical error as rule 23.2(2) does clearly address the issue.

We note that although the Administrative Law Judge stated that the Claimant has not established good cause for an alternate base period, the fact is she already was using the alternate base period and the request to add wages would not have changed this since either way she would not have been monetarily eligible under the regular base period. Finally, the Administrative Law Judge in this case was Administrative Law Judge Terence P. Nice even though the decision was stamped by Administrative Law Judge Jeremy Peterson.

Kim D. Schmett

Ashley R. Koopmans

James M. Strohman