

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

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DAVID H ARMSTRONG

Claimant

HEARING NUMBER: 19BUI-03601

EMPLOYMENT APPEAL BOARD  
DECISION

N O T I C E

**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:** 96.4-4

D E C I S I O N

**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. 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**. The issue of backdating is **REMANDED**.

**DISCUSSION:**

We emphasize that the issue in this case is not whether the Claimant has qualifying wages in order to establish monetary eligibility. The issue in this case is whether **following the establishment of his first benefit year on April 1, 2018** the Claimant has worked in insured work and earned wages for that insured work equal to eight times his weekly benefit amount.

It may be confusing but there are two separate requirements: (1) monetary eligibility, and (2) second benefit year requalification following collection of benefits.

**Monetary Eligibility:** First, an employee who loses a job may apply for unemployment compensation benefits with Iowa Workforce Development. One of the requirements for being eligible for benefits is that the Claimant must have adequate wages in his “base period.” The basic idea is that person who is not actively in the labor market is not “unemployed” and should not receive unemployment compensation if she loses some miscellaneous temporary work. Further the fund is supported by a payroll tax paid entirely by employers. A minimal wages requirement helps assure that a potential claimant’s wages paid in the past have generated sufficient tax revenue to support payment of benefits in the future. To meet these goals the Code requires that a minimum amount of wages (qualifying wages) be earned in the recent past (the base period).

So, once a person files an initial claim for benefits he thereby establishes an effective date for his claim. The agency then examines the wages that have been paid to the worker in the past to see if he is eligible. Every Iowa employer has to report the wages of every Iowa worker to Iowa Workforce on a quarterly basis. Wages are reported at the end of the quarter. So when a Claimant files that initial claim there are no wages yet reported for the quarter of filing. So the agency cannot examine the wage records in the quarter of filing – they don’t exist. Meanwhile, there is no guarantee that the just-ended quarter wage records will be processed, so the agency does not look at the previous quarter (the “lag quarter”) either. So skipping the quarter of filing, and skipping the lag quarter, and counting backwards four quarters we find the “base period.”

To be monetarily eligible a worker must be paid “qualifying wages” in the applicable base period. Under the regulations “qualifying wages” is “[t]he amount of wages a worker must have earned in insured work in order to be an insured worker.” 871 IAC 24.1(131). “[T]he claimant must have (1) base period wages greater than 125% of an individual’s highest-earning quarter within the base period, (2) highest-earning-quarter wages at least 3.5% of the statewide average annual wage for insured work, and (3) second-highest-earning-quarter wages at least 50% of the wages required by (2).” *Stanley v. EAB*, No. 16-2047, slip op. at 4 (Iowa App. 1/10/2018)(summarizing Iowa Code §96.4(2)).

This is the requirement just to have minimal paid wages supporting payment of benefits. But this alone does not allow one to establish a subsequent benefit year. In addition, a Claimant who seeks to establish a second benefit year must meet the second year requalification requirement.

**Second Benefit Year Requirement:** In order to *establish* a second benefit year a claimant must be have sufficient covered wages in the base period for that second benefit year. But **additionally** in order to *collect* benefits in a second benefit year a claimant must during or subsequent to the first benefit year, work in and be paid wages for insured work totaling at least eight times the first year’s WBA.

Iowa Code §96.4(4)(c) provides:

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

4. c. 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 eight times** the individual’s weekly benefit amount, as a condition to receive benefits in the next benefit year.

This is expanded upon by the rules of the Department.

871—24.31(96) Subsequent benefit year condition.

24.31(1) The claimant must have been paid benefits on a previous claim.

24.31(2) If the claimant has the qualifying wages for the establishment of a second benefit year as specified in Iowa Code section 96.4(4) which were earned prior to the filing of the previous claim, the claimant must, **during or subsequent to that year, have worked in** (except in back pay awards) and have been paid wages for insured work totaling at least eight times the claimant's weekly benefit amount from the claimant's previous benefit year as of the end of the benefit year end date. **Vacation pay, severance pay and bonuses are not considered as wages for second benefit year requalification purposes.**

...

24.31(6) Disqualification for lack of eight times the claimant's weekly benefit amount from the claimant's previous benefit year in insured work shall be removed upon the verification that the claimant worked in and has been paid wages for insured work totaling eight times the claimant's weekly benefit amount from the claimant's previous benefit year during or subsequent to the previous benefit year.

871 IAC 24.31 (emphasis added).

Thus for a **second** benefit year **it is not enough to have wages that meet the monetary eligibility requirements**. One must also be minimally re-attached to the labor market before a second benefit year is allowed and this means the eight times requirement must be met as well. In second benefit year cases the claimant must work in and be paid for insured work following the establishment of the first benefit year. This requalifying amount is eight times the weekly benefit amount. The purpose of this requirement is to assure that those collecting unemployment benefits have shown a reattachment to the labor market other than the jobs worked during the base period of the first claim.

*The Role Of Severance:* Severance **does** count as wages for monetary eligibility purposes. "Wages also means wages in lieu of notice, separation allowance, severance pay, or dismissal pay." 871 IAC 23.3(1).

Severance **does not** count as wages for second benefit year requalification purposes. "Vacation pay, severance pay and bonuses are not considered as wages for second benefit year requalification purposes" 871 IAC 24.31(2).

The reason for the difference is that while severance counts as earned wages, it is obviously earned *before* the separation, even though paid afterwards. It is not earned in the benefit year, and so the "worked in" requirement is generally not met. Severance does not satisfy the requirement of job reattachment, because it is not earned subsequent to the job loss. So the agency regulations explicitly exempt severance from counting for second benefit year requalification purposes.

*The Claimant Is Monetarily Eligible:* Since severance counts as wages for eligibility purposes the Claimant is monetarily eligible on this claim. He shows wages paid in two quarters of his base period, one being actual wages and one being the severance. The severance counts as wages for eligibility, and since the wages are in two quarters and exceed the applicable minimums, the Claimant is monetarily eligible to establish a second benefit year.

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*The Claimant Has Not Yet Satisfied The Second Benefit Year Requalification Requirement:* Since the Claimant filed for benefits last year he has not worked in insured work. He has been paid severance, but as we explained this does **not count** for second benefit year requalification purposes.

In order to be eligible for benefits in this benefit year the Claimant will have to first earn eight times his former weekly benefit amount. Once he does so if he is again unemployed *in this benefit year*, he will no longer be disqualified for failure to meet the second benefit year requalification requirement.

*The Failure to File Weekly Claims:* The Claimant argues that he should be able to backdate his weekly claims in the *prior claim year*. He asserts as justification for backdating the advice he claims to have gotten from Iowa Workforce. That issue was not adjudicated by the Administrative Law Judge, nor remanded. We remand the backdating issue to claims. It seems to be the real issue in the case. \_

**DECISION:**

The administrative law judge's decision dated May 28, 2019 is AFFIRMED.

The matter is **REMANDED** to Iowa Workforce, Benefits Bureau, on the question of backdating of weekly claims for the 2018 claim year.

Again, in order to be eligible for benefits in **this** benefit year the Claimant will have to first work in insured work, and from that work in insured work earn wages in excess of eight times \$473. He will, of course, also have to be otherwise eligible.

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Kim D. Schmett

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Ashley R. Koopmans

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James M. Strohman

RRA/fnv