

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

KAITLYN M HESS
Claimant

MORRISON CK RESTAURANT GROUP INC
Employer

APPEAL 23A-UI-00766-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/25/22
Claimant: Appellant (4)

Iowa Code § 96.3(4) – Payment – Benefit Determination, Dependents

STATEMENT OF THE CASE:

Claimant filed an appeal from the December 30, 2022 monetary determination that reflected no wages earned by claimant from Morrison CK Restaurant Group. The Iowa Department of Inspections and Appeals properly notified the parties of the hearing. A telephone hearing was held on February 10, 2023. Claimant participated personally. Employer did not participate. The administrative law judge took official notice of the administrative record. The record remained open for claimant to submit copies of W-2 forms and paystubs, which were authored or produced by employer. Claimant's 2021 W-2 is admitted as Claimant's Exhibit A. Claimant's 2022 W-2 is admitted as Claimant's Exhibit B.

ISSUES:

Whether claimant's appeal of the monetary determination is timely
Whether claimant's monetary determination is correct.
Whether claimant is monetarily eligible to receive benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The monetary determination was mailed to claimant on December 30, 2022 at her correct address. Claimant received the monetary determination but does not recall the date of receipt. Mail sent from Des Moines, Iowa is usually received in Stuart, Iowa in two to three days. Claimant has no reason to believe the December 30, 2022 monetary determination was not received in two to three days.

Claimant called Iowa Workforce Development (IWD) the same day that claimant received the monetary determination to ask why her claim was denied. IWD explained that there were no wages reported for claimant.¹ Claimant became ill and was unable to contact IWD or file an appeal.

¹ Employer incorrectly stated the first three digits of claimant's social security number when it reported claimant's wages. Claimant's social security number is correct on the notice of hearing.

On January 19, 2023, claimant took the monetary determination and her paystubs from employer to the IowaWorks office in Des Moines, Iowa. IWD told claimant that they would start an investigation and that she would have a hearing with IWD and employer. Claimant did not file an appeal based upon the incorrect information she received from IWD.

Claimant filed an initial claim for benefits effective December 25, 2022 after she was laid off by Morrison CK Restaurant Group. Claimant worked as a full-time Waitress, Cook and Manager for employer from July 2021 until December 2022. Claimant's base period began July 1, 2021 and ended June 30, 2022. Claimant earned wages from employer in 2021 and 2022. (Exhibits A and B)

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Admin. Code r. 871-24.9(1)(b) provides (emphasis added):

(1) Monetary Determinations.

b. The monetary record shall constitute a final decision unless newly discovered facts which affect the validity of the original determination or a written request for reconsideration is filed by the individual within **ten days** of the date of mailing of the monetary record specifying the grounds of objection to the monetary record.

Iowa Admin. Code r. 871-24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

Claimant received the decision but did not appeal it until after the deadline. This was due to claimant's illness and the information that she received from IWD. Because claimant's delay was due, in part, to agency error or misinformation, her appeal is considered timely.

The next issues to be determined are whether the monetary determination is correct and whether claimant is monetarily eligible for benefits. For the reasons that follow, the administrative law judge concludes:

Iowa Code section 96.4(4)(a), (b) provide:

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

a. 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 paragraph 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.

b. For an individual who does not have sufficient wages in the base period, as defined in section 96.19, to otherwise qualify for benefits pursuant to this subsection, the individual's base period shall be the last four completed calendar quarters immediately preceding the first day of the individual's benefit year if such period qualifies the individual for benefits under this subsection.

(1) Wages that fall within the alternative base period established under this paragraph "b" are not available for qualifying benefits in any subsequent benefit year.

(2) Employers shall be charged in the manner provided in this chapter for benefits paid based upon quarters used in the alternative base period.

The monetary determination is not correct. Claimant earned wages from employer during her base period. Those wages are not reflected on her monetary determination. Claimant's wages from employer should be added to her monetary determination. Claimant's monetary eligibility should be redetermined after the addition of her wages from employer.

DECISION:

Claimant's appeal of the monetary determination is timely. The December 30, 2022 monetary determination is MODIFIED IN FAVOR OF APPELLANT. The monetary determination is not correct. Claimant's wages from employer shall be added to the monetary record. Claimant's monetary eligibility shall be redetermined accordingly.



Adrienne C. Williamson
Administrative Law Judge

February 16, 2023
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.