

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANGELA FRENCH
Claimant

HUDSON, BROOKS AND ASSOCIATES, LL
Employer

APPEAL 22A-UI-02176-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/28/21
Claimant: Appellant (1R)**

Iowa Code § 96.3(4) and (5) – Determination of Benefits/Duration of Benefits
Iowa Admin. Code r. 871—23.2(2) – Wages for Employment

STATEMENT OF THE CASE:

On January 3, 2022, the claimant, Angela French, appealed the December 28, 2021, (reference 01) unemployment insurance decision that determined the wages reported by the employer were reported correctly. The parties waived notice of the hearing, and a telephone hearing was held on February 16, 2022. Claimant participated personally. The employer, Hudson, Brooks and Associates, LL, participated through Justin Krogman. Claimant's Exhibit A was admitted. The administrative law judge took official notice of the administrative record.

ISSUE:

Did the employer properly report wages in the quarter they were earned or paid?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant filed an original claim for unemployment insurance benefits with an effective date of November 28, 2021.

The base period wages for her November 28, 2021, claim include the third quarter of 2020 through the second quarter of 2021.

Claimant last worked for this employer from June 9, 2020, through July 15, 2020. The employer last issued her a paycheck on July 30, 2020, in the third quarter of 2020. The employer reported the wages as paid during the third quarter of 2020. Claimant does not dispute that this was the last paycheck she received from this employer, or when she received the pay.

Claimant provided three paystubs, including her final paystub, for the pay period ending November 12, 2021, from another employer—Roselle Insurance Agency, Inc., 1424 Hwy 71 N, Carroll, Iowa, 51401. Claimant worked for that employer from November 2, 2020, through November 26, 2021. Wages reflected as paid to claimant during 2021 do not appear on the WAGE-A screen. Claimant appealed intending to appeal the omission of the wages paid to her by this employer. This issue will be remanded to the Benefits Bureau for investigation.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.3(4) provides:

4. Determination of benefits. With respect to benefit years beginning on or after July 1, 1983, an eligible individual's weekly benefit amount for a week of total unemployment shall be an amount equal to the following fractions of the individual's total wages in insured work paid during that quarter of the individual's base period in which such total wages were highest; the director shall determine annually a maximum weekly benefit amount equal to the following percentages, to vary with the number of dependents, of the statewide average weekly wage paid to employees in insured work which shall be effective the first day of the first full week in July:

If the number of dependents is:	The weekly benefit amount shall equal the following fraction of high quarter wages:	Subject to the following maximum percentage of the statewide average
0	1/23	53%
1	1/22	55%
2	1/21	57%
3	1/20	60%
4 or more	1/19	65%

The maximum weekly benefit amount, if not a multiple of one dollar shall be rounded to the lower multiple of one dollar. However, until such time as sixty-five percent of the statewide average weekly wage exceeds one hundred ninety dollars, the maximum weekly benefit amounts shall be determined using the statewide average weekly wage computed on the basis of wages reported for calendar year 1981. As used in this section "dependent" means dependent as defined in section 422.12, subsection 1, paragraph "c", as if the individual claimant was a taxpayer, except that an individual claimant's nonworking spouse shall be deemed to be a dependent under this section. "Nonworking spouse" means a spouse who does not earn more than one hundred twenty dollars in gross wages in one week.

Iowa Code section 96.3(5)a provides:

a. Duration of benefits. The maximum total amount of benefits payable to an eligible individual during a benefit year shall not exceed the total of the wage credits accrued to the individual's account during the individual's base period, or twenty-six times the individual's weekly benefit amount, whichever is the lesser. The director shall maintain a separate account for each individual who earns wages in insured work. The director shall compute wage credits for each individual by crediting the individual's account with one third of the wages for insured work paid to the individual during the individual's base period. However, the director shall recompute wage credits for an individual who is laid off due to

the individual's employer going out of business at the factory, establishment, or other premises at which the individual was last employed, by crediting the individual's account with one-half, instead of one-third, of the wages for insured work paid to the individual during the individual's base period. Benefits paid to an eligible individual shall be charged against the base period wage credits in the individual's account which have not been previously charged, in the inverse chronological order as the wages on which the wage credits are based were paid. However if the state "off" indicator is in effect and if the individual is laid off due to the individual's employer going out of business at the factory, establishment, or other premises at which the individual was last employed, the maximum benefits payable shall be extended to thirty-nine times the individual's weekly benefit amount, but not to exceed the total of the wage credits accrued to the individual's account.

Iowa Admin. Code r. 871—23.2(2) provides:

Definition of wages for employment during a calendar quarter.

(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.

(emphasis added)

Claimant and the employer agree that the last wages were paid to claimant in the third quarter of 2020, which is also reflected in the administrative record. Accordingly, the decision of the representative determining that wages were properly reported in the second and third quarters of 2020 is affirmed.

DECISION:

The December 28, 2021 (reference 01) unemployment insurance decision is affirmed. The claimant's request to add wages from April 1, 2020, through September 30, 2020, was properly denied.

REMAND:

The issue of wages earned by claimant as the result of employment with Roselle Insurance Agency, Inc, as delineated in the findings of fact and evidenced by paystubs in the hearing record, and whether such wages affect claimant's eligibility for unemployment insurance benefits is remanded to the Benefits Bureau of Iowa Workforce Development for investigation and determination.



Alexis D. Rowe
Administrative Law Judge

March 7th, 2022
Decision Dated and Mailed

ar/rs