

New York State Department of Labor

A-750-2167

A-750- 2167 Index 908.1

NEW YORK STATE DEPARTMENT OF LABOR
UNEMPLOYMENT INSURANCE DIVISION
ADJUDICATION SERVICES OFFICE

September, 2022

INTERPRETATION SERVICE-BENEFIT CLAIMS

Cancelling a Valid Original Claim to File a Second Claim

There is no authority in either the Labor Law or the Rules and Regulations of the Commissioner of Labor that allow a claimant to cancel a valid original claim and then open a new claim once the claimant has certified to at least one effective day or post-date a previously established valid claim.

AB 543965

The Department of Labor issued the initial determination ruling the claimant not entitled to receive benefits, effective October 1, 2007, on the basis that the claimant was unable to file a valid original claim pursuant to Labor Law § 527 because the claimant had a valid original claim effective August 27, 2007, and his benefit year under that claim had not expired. The claimant requested a hearing.

Pursuant to a remand order of the Appeal Board filed July 18, 2008 (Appeal Board No. 541200), the Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances on behalf of the claimant, the employer, and the Commissioner of Labor. By decision

filed October 28, 2008 (A.L.J. Case No. 308-05012), the Administrative Law Judge sustained the initial determination.

The claimant appealed the Judge's decision to the Appeal Board. The Board considered the arguments contained in the written statement submitted on behalf of the claimant.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant was employed by a private sector employer until April 19, 2007, and by a state agency from June 25, 2007 to August 28, 2007. On August 31, 2007, the claimant contacted the Telephone Claims Center to open a claim for unemployment insurance benefits. The claimant asked several questions regarding his eligibility for benefits, and was told that his earnings from the third quarter of 2007 could not be considered if he filed that day, but could be considered if he waited to file until October 1, 2007. He was also given information about the requirements for filing a valid original claim. The claimant filed his claim that day, which was made effective August 27, 2008.

On September 4, 2007, the claimant received his monetary benefit determination which reflected total earnings from his private sector employer of \$4,164.25 in his basic base period (which comprised the second, third and fourth quarters of 2006, and the first quarter of 2007) and an additional \$841.00 in earnings from his private sector employer in his alternate base period quarter (the second quarter of 2007). There were no earnings reflected from the state agency in any of the quarters. The determination showed a weekly benefit rate of \$79.00 and included the information that if he wanted to use his alternate quarter wages, he should complete and return the Request for Alternate Base Period form in his handbook. The claimant did not return that form, but did return a Form TCC 19 on September 11, on which he hand wrote the earnings he had received from the state agency in each week starting on June 25, 2007. He did not include any paystubs or other documents substantiating these earnings, as instructed on the form.

In early October 2007, the claimant spoke with an employment counselor at an Employment Services office and with two other representatives at the Telephone Claims Center, describing the information he had received on August 31; all three responded that the information did not sound correct.

OPINION: Pursuant to Labor Law § 527.1, a valid original claim is “a claim filed by a claimant who meets the following qualifications . . . (c) his previously established benefit year, if any, has expired”.

The credible evidence establishes that the claimant filed a valid original claim effective August 27, 2007, establishing a basic base period beginning with the second quarter of 2006, and through the first quarter of 2007 and an alternate base period beginning with the third quarter of 2006, and through the second quarter of 2007; and establishing a benefit year which would end August 31, 2008. As a result, the claimant is not able to file a new claim, to be effective October 31, 2007. There is a dispute between the parties regarding the information given to the claimant on August 31, 2007 by the representative of the Department of Labor. However, there is no need to

decide which party is more credible in this regard. Whether the claimant was actually misinformed about the possibility of filing a new claim in October after he received his monetary determination, or misunderstood the information he was given, or the representative explained the information poorly is not dispositive: There is no authority in either the law or the regulations to allow the claimant to cancel one claim and open a new claim; and on appeal the claimant has not cited to any legal precedent which would establish such authority. The claimant's reliance on *Matter of Lang*, 9 AD3d 648 (3d Dept 2004); *Matter of Chen*, 307 AD2d 580 (3d Dept 2003); *Matter of Prieto*, 255 AD2d 859 (3d Dept 1998); and *Matter of Tyk*, 205 AD2d 820 (3d Dept 1994), is misplaced. Those cases merely stand for the proposition that as there was no credible evidence of misinformation, the claimants' failures to register or to certify, as the case may be, was not excused. Here, however, there is no failure to act by the claimant; rather, the claimant did, in fact, act but does not agree with the consequences of his act. In Appeal Board No. 413595, the claimant also alleged local office misinformation. The Board found his contention to be without merit, writing, The public policy of the state is to relieve the "economic insecurity" of "involuntary employment" [citation omitted]. Economic security would not be promoted by encouraging claimants to forgo current valid claims in the hope of obtaining higher benefits in future claims. Therefore, it is not decisive that the claimant's benefit rate would have been higher if he had waited several weeks to file his claim.

The local office was obligated to accept the claimant's original application for benefits without delay and did so. Thereafter, his benefit rate was calculated by operation of law and was unaffected by any casual advice he may have drawn from local office personnel.

As the claimant filed his valid original claim effective August 31, 2007, and the benefit year under that claim would not expire until August 31, 2008, we conclude that he was properly held to be unable to file a valid original claim effective October 1, 2007.

DECISION: The decision of the Administrative Law Judge is affirmed.

The initial determination, ruling the claimant not entitled to receive benefits, effective October 1, 2007, on the basis that the claimant was unable to file a valid original claim pursuant to Labor Law § 527 because the claimant had a valid original claim effective August 27, 2007, and his benefit year under that claim had not expired, is sustained.

The claimant is denied benefits with respect to the issues decided herein.

COMMENTS

A claimant who has filed a valid original claim and certified to at least one effective day in the waiting week cannot file a new claim until the benefit year expires on their existing claim.

The following 402.1 determination applies to this scenario.

This is true only for valid original claims. A claimant who does not have entitlement does not have a valid original claim even if they had certified in the waiting week and is eligible to file a new claim as long as they meet all other eligibility requirements.

A claimant must file a “valid original claim” in order to qualify for benefits. According to Section 527.1 of the Labor Law , a valid original claim is a claim filed by a claimant who meets the following qualifications: (a) able to work and available for work; (b) is not subject to any disqualification or suspension; (c) his or her previously established benefit year, if any, has expired; and (d) he or she has been paid remuneration by employers liable for contributions or for payments in lieu of contributions, other than employers from whom the claimant lost employment due to misconduct, for employment during at least two calendar quarters of the base period, with total base period remuneration of one and one-half times the high calendar quarter remuneration, and with at least two hundred twenty one (221) times the minimum wage (rounded down to the nearest \$100) during the high calendar quarter in the base period. In addition, the high quarter wages are capped at twenty-two (22) times the maximum benefit rate. The capped wages are used to determine whether the claimant has total base period remuneration of one and one-half times the high calendar quarter. The claimant’s benefit year begins on the Monday in the week in which the claimant filed his or her valid original claim.

A claimant must work in employment and receive remuneration equal to at least ten times the claimant’s benefit rate since at least the beginning of the prior valid original claim in order to establish a subsequent valid original claim.

Please note the decision states that the claim was made effective August 27, *2008*. The correct year is 2007. Since the typo occurs in the Appeal Board decision we cannot change it.

