

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RANDY L ECKSTEIN
Claimant

ARCONIC DAVENPORT LLC
Employer

APPEAL 20A-UI-11773-S1-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (2)

Iowa Code § 96.3-7 - Recovery of Overpayment of Benefits
Iowa Admin. Code r. 871-24.58 – Voluntary Shared Work
Iowa Code § 96.40 - Voluntary Shared Work Program
PL 116-136 Section 2104 (B) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

The claimant appealed a representative's decision dated August 21, 2020, reference 02, that concluded the claimant was overpaid unemployment insurance benefits and Federal Pandemic Unemployment Compensation. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on November 5, 2020. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. Iowa Workforce Development (IWD) was represented by Brooke Axiotis, Attorney for the Agency, and participated by Mary Piagentini, Workforce Program Coordinator for Voluntary Shared Work Program. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the claimant is overpaid unemployment insurance benefits and Federal Pandemic Unemployment Compensation.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired by Arconic Corporation Davenport Works LLC, on July 3, 1995.

The claimant participated in the voluntary shared work program through July 18, 2020. He worked twenty-four hours during the week ending May 16, 2020. The claimant filed for Voluntary Shared Work benefits for that week. Later, the employer changed the number of hours the claimant worked to thirty-four. With that change, the Agency determined the claimant was not eligible for benefits.

For the week ending May 16, 2020, the claimant received \$207.00 in Voluntary Shared Work benefits and \$600.00 in Federal Pandemic Unemployment Compensation.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons the administrative law judge concludes the claimant was not overpaid unemployment insurance benefits.

Iowa Code section 96.40 provides:

1. An employer who wishes to participate in the shared work unemployment compensation program established under this section shall submit a written shared work plan in a form acceptable to the department for approval.
 - a. As a condition for approval by the department, a participating employer shall agree to furnish the department with reports relating to the operation of the shared work plan as requested by the department.
 - b. The employer shall monitor and evaluate the operation of the established shared work plan as requested by the department and shall report the findings to the department.
2. The department may approve a shared work plan if all of the following conditions are met:
 - a. The employer has filed all reports required to be filed under this chapter for all past and current periods and has paid all contributions due for all past and current periods.
 - b. The plan certifies that the aggregate reduction in work hours is in lieu of layoffs which would have affected at least ten percent of the employees in the affected unit or units to which the plan applies and which would have resulted in an equivalent reduction in work hours. The employer provides an estimate of the number of layoffs that would occur absent participation in the program. *"Affected unit"* means a specified plant, department, shift, or other definable unit.
 - c. The employees in the affected unit are identified by name and social security number and consist of at least five individuals.
 - d. The shared work plan reduces the normal weekly hours of work for an employee in the affected unit by not less than twenty percent and not more than fifty percent with a corresponding reduction in wages.
 - e. The reduction in hours and corresponding reduction in wages must be applied equally to all employees in the affected unit.
 - f. The plan provides that fringe benefits will continue to be provided to employees in affected units as though their workweeks had not been reduced or to the same extent as other employees not participating in the program. *"Fringe benefits"* means employer-provided health benefits and retirement benefits under a defined benefit plan or a defined contribution plan pursuant to the Internal Revenue Code.
 - g. The plan will not serve as a subsidy of seasonal employment during the off season, nor as a subsidy of temporary part-time or intermittent employment.
 - h. The employer certifies that the employer will not hire additional part-time or full-time employees for the affected work force while the program is in operation.
 - i. The duration of the shared work plan will not exceed fifty-two weeks.
 - j. The plan is approved in writing by the collective bargaining representative for each employee organization or union which has members in the affected unit, and the plan provides for notification to employees in advance of participation.

- k. Participation by the employer shall be consistent with applicable federal and state laws.
3. The employer shall submit a shared work plan to the department for approval at least thirty days prior to the proposed implementation date.
4. The department may revoke approval of a shared work plan and terminate the plan if the department determines that the shared work plan is not being executed according to the terms and intent of the shared work unemployment compensation program, or if it is determined by the department that the approval of the shared work plan was based, in whole or in part, upon information contained in the plan which was either false or substantially misleading.
5. An individual who is otherwise entitled to receive regular unemployment compensation benefits under this chapter shall be eligible to receive shared work benefits with respect to any week in which the department finds all of the following:
 - a. The individual is employed as a member of an affected unit subject to a shared work plan that was approved before the week in question and is in effect for that week.
 - b. The individual is able to work, available for work, and works all available hours with the participating employer.
 - c. The individual's normal weekly hours of work have been reduced by at least twenty percent but not more than fifty percent, with a corresponding reduction in wages.
6. The department shall not deny shared work benefits for any week to an otherwise eligible individual by reason of the application of any provision of this chapter which relates to availability for work, active search for work, or refusal to apply for or accept work with an employer other than the participating employer under the plan.
7. The department shall pay an individual who is eligible for shared work benefits under this section a weekly shared work benefit amount equal to the individual's regular weekly benefit amount for a period of total unemployment, less any deductible amounts under this chapter except wages received from any employer, multiplied by the full percentage of reduction in the individual's hours as set forth in the employer's shared work plan. If the shared work benefit amount calculated under this subsection is not a multiple of one dollar, the department shall round the amount so calculated to the next lowest multiple of one dollar. An individual shall be eligible for shared work benefits for any week in which the individual performs paid work for the participating employer for a number of hours equal to not less than twenty percent and not more than fifty percent of the normal weekly hours of work for the employee.
8. An individual shall not be entitled to receive shared work benefits and regular unemployment compensation benefits in an aggregate amount which exceeds the maximum total amount of benefits payable to that individual in a benefit year as provided under section 96.3, subsection 5, paragraph "a".
9. All benefits paid under a shared work plan shall be charged in the manner provided in this chapter for the charging of regular benefits. All benefits paid under a shared work plan shall be charged in the manner provided in this chapter for the charging of regular benefits.

- a. An employer may provide as part of the plan a training program the employees may attend during the hours that have been reduced. Such a training program may include a training program funded under the Workforce Investment Act of 1998, Pub.L. No105-220. If the employer is able to show that the training program will provide a substantive increase in the workplace and employability skills of the employee so as to reduce the potential for future periods of unemployment, the department shall relieve the employer of charges for future periods of unemployment, the department shall relieve the employer of charges for benefits paid to the individual attending training under the plan. The employee may attend the training at the work site utilizing internal resources, provided the training is outside of the normal course of employment, or in conjunction with an educational institution.
10. An individual who has received all of the shared work benefits and regular unemployment compensation benefits available in a benefit year shall be considered an exhaustee, as defined in section 96.19, subsection 20, for purposes of the extended benefit program administered pursuant to section 96.26.

Iowa Code section 96.3(7)a-b, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. The employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. This prohibition against relief of charges shall apply to both contributory and reimbursable employers.

(b) However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Under Iowa Code § 96.40(2)(d) a worker must work twenty-four to thirty-six hours per week to be covered by the Voluntary Shared Work Program . For the week ending May 16, 2020, the claimant worked thirty-four hours. The administrative law judge finds that for the week ending May 16, 2020, the claimant was eligible for voluntary shared work benefits. The claimant received \$207.00 in state unemployment insurance benefits for the week ending May 16, 2020. The claimant was not overpaid benefits under to Iowa Code Section 96.3-7.

The final issue is whether the claimant is eligible for or overpaid Federal Pandemic Unemployment Compensation.

PL116-136, Sec. 2104 provides, in pertinent part:

(b) Provisions of Agreement

(1) Federal pandemic unemployment compensation.--Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to

(A) the amount determined under the State law (before the application of this paragraph), plus

(B) an additional amount of \$600 (in this section referred to as "Federal Pandemic Unemployment Compensation").

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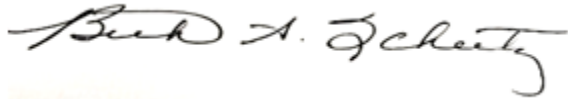
(f) Fraud and Overpayments

(2) Repayment -- In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled, the State shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation to the State agency...

The claimant has not been disqualified from receiving regular unemployment insurance benefits. Accordingly, he is not disqualified from receiving the \$600.00 in Federal Pandemic Unemployment Compensation.

DECISION:

The decision of the representative dated August 21, 2020, reference 02, is reversed. The claimant was not overpaid \$207.00 in Voluntary Shared Work benefits and \$600.00 in Federal Pandemic Unemployment Compensation for the week ending May 16, 2020.



Beth A. Scheetz
Administrative Law Judge

November 12, 2020
Decision Dated and Mailed

bas/mh