

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHAD D DURANT

Claimant

APPEAL 22A-UI-08024-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CONTINENTAL CEMENT COMPANY LLC

Employer

OC: 07/26/20

Claimant: Appellant (1)

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Iowa Code § 96.5(5) – Payment – Severance pay, disability, pension

STATEMENT OF THE CASE:

Claimant filed an appeal from the March 22, 2022 (reference 05) unemployment insurance decision that found claimant was overpaid regular unemployment insurance (UI) benefits. The parties were properly notified of the hearing. A telephone hearing was held on May 16, 2022. Claimant participated. Employer participated through Jamie Reyes, Human Resources Manager. No exhibits were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant is totally, partially or temporarily unemployed.

Whether claimant correctly reported wages earned.

Whether claimant is eligible for benefits based on wages earned.

Whether claimant is overpaid UI benefits.

FINDINGS OF FACT:

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

Claimant filed an initial claim for benefits effective July 26, 2020. Claimant's weekly benefit amount is \$493.00. Claimant filed an ongoing weekly claim for the benefit week ending February 13, 2021 and reported zero wages earned.

Claimant began employment with Continental Cement Company on February 10, 2021. From February 10, 2021 through February 13, 2021, claimant worked 24 hours and earned gross wages in the amount of \$578.40.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.3(7) states:

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.

Iowa Code section 96.5(5) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

5. Other compensation.

a. For any week with respect to which the individual is receiving or has received payment in the form of any of the following:

(1) Wages in lieu of notice, separation allowance, severance pay, or dismissal pay.

(2) Compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States.

(3) A governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment made under a plan maintained or contributed to by a base period or chargeable employer where, except for benefits under the federal Social Security Act or the federal Railroad Retirement Act of 1974 or the corresponding provisions of prior law, the plan's eligibility requirements or benefit payments are affected by the base period employment or the remuneration for the base period employment. However, this subparagraph shall only be applicable if the base period employer has made one hundred percent of the contribution to the plan.

b. Provided, that if the remuneration is less than the benefits which would otherwise be due under this chapter, the individual is entitled to receive for the week, if otherwise eligible, benefits reduced by the amount of the remuneration. Provided further, if benefits were paid for any week under this chapter for a period when benefits, remuneration or compensation under paragraph "a", subparagraph (1), (2), or (3), were paid on a retroactive basis for the same period, or any part thereof, the department shall recover the excess amount of benefits paid by the department for the period, and no employer's account shall be charged with benefits so paid. However, compensation for service-connected disabilities or compensation for accrued leave based on military service by the beneficiary with the armed forces of the United States, irrespective of the amount of the benefit, does not disqualify any individual otherwise qualified from any of the benefits contemplated herein. A deduction shall not be made from the amount of benefits payable for a week for individuals receiving federal social security pensions to take into account the individuals' contributions to the pension program.

Iowa Admin. Code r. 871-24.18 provides:

Wage-earnings limitation. An individual who is partially unemployed may earn weekly a sum equal to the individual's weekly benefit amount plus \$15 before being disqualified for excessive earnings. If such individual earns less than the individual's weekly benefit

amount plus \$15, the formula for wage deduction shall be a sum equal to the individual's weekly benefit amount less that part of wages, payable to the individual with respect to that week and rounded to the lower multiple of one dollar, in excess of one-fourth of the individual's weekly benefit amount.

During the benefit week ending February 13, 2021, claimant earned more than his weekly benefit amount plus \$15.00. Therefore, claimant was not partially unemployed and was not entitled to UI benefits. The administrative law judge concludes that claimant has been overpaid UI in the gross amount of \$493.00 for the one-week period between February 7, 2021 and February 13, 2021. Claimant is required to repay those benefits.

DECISION:

The March 22, 2022 (reference 05) unemployment insurance decision is affirmed. Claimant was overpaid UI benefits in the gross amount of \$493.00 for the one-week period between February 7, 2021 and February 13, 2021, which must be repaid.



Adrienne C. Williamson
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May 18, 2022
Decision Dated and Mailed

acw/acw