

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**TODD W WHITTERS**  
Claimant

**APPEAL NO: 18A-UI-06428-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 11/19/17  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the June 7, 2018, (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision which concluded the claimant was overpaid \$473.00 in unemployment insurance benefits because he failed to accurately report earnings from Russell Construction Co.

After due notice was issued, a hearing was scheduled and held by telephone conference call on June 27, 2018. The claimant participated personally. Tyler Lysinger, investigator, participated for IWD. Department Exhibits 1-11 were admitted. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Did IWD correctly determine that the claimant was overpaid unemployment insurance benefits, and was the overpayment amount correctly calculated?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed a claim for benefits with an effective date of November 19, 2017. The claimant filed for and received a total of \$473.00 in unemployment insurance benefits for the week ending April 7, 2018.

When the claim was established effective November 19, 2017, the claimant was given the option of reading the Unemployment Insurance Handbook online or a hardcopy (Department Exhibit 2-1). The Unemployment Insurance Handbook includes instructions for properly filing claims and informs claimants that failure to follow the instructions could result in a denial or overpayment of benefits. The handbook also informs claimants that they should call IWD customer service for help if they don't understand the information in the handbook.

With respect to "Reporting Earnings," the handbook states:

Gross earnings/wages (before tax and payroll deductions) must be reported on the weekly claim during the week the wages are earned, not when the wages are paid. Earnings must be reported even if the payment has not been received yet. To calculate the amount to report, the individual should multiply the number of hours worked by the hourly wage. Individuals should report the full gross amount of earnings and IWD will calculate any deductions. If an individual earns \$15.00 over their WBA, they will not receive a benefit payment (Department exhibit 9).

The Handbook also provides in part:

**Overpayment**

Individuals are responsible for repaying any benefits they were not eligible to receive. Future UI benefit payments are withheld until the overpayment has been recovered in full. If the individual is not making attempts to repay the overpayment, the debt may be recovered by withholding state and federal tax refunds, casino and lottery winnings, and vendor payments. Overpayments caused by fraud include a 15% penalty.

IWD conducted an audit and discovered that the claimant began employment and received wages from Russell Construction Company during the week ending April 7, 2018 (Department Exhibit 7). The claimant began his employment that week and worked 40 hours, earning \$1,148.00 (Department Exhibit 7). The claimant also made a weekly continued claim for the week ending April 7, 2018 and reported he did not earn wages (Department Exhibit 4-1). Consequently, he was paid unemployment insurance benefits in the amount of \$473.00. Had the claimant reported all of his wages, he would not have received benefits due to amount of wages earned exceeding his weekly benefit amount.

Investigator Lysinger contacted the claimant to review the wages reported by the employer versus by the claimant. The claimant did not dispute the wages reported or overpayment amount. There was no allegation of fraud or misrepresentation in the misreporting of the wages by the claimant. The Agency concluded the claimant had been overpaid in the amount of \$473.00 for the week ending April 7, 2018, due to benefits received when he was performing full-time work at Russell Construction Company for the same week.

The claimant also raised concern at the hearing about his request to backdate his claim (which he believed resulted in an underpayment of benefits to him.) That issue has been addressed in the reference 02 decision and subsequent Appeals Hearing Decision 18A-UI-06429-JC-T.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes IWD did correctly establish and calculate the claimant's overpayment of benefits.

Iowa Code section 96.3(7) provides, in pertinent part:

**7. Recovery of overpayment of benefits.**

Recovery of overpayment of benefits. 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 division of job service 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 division a sum equal to the overpayment.

The undisputed evidence presented is the claimant made a weekly claim for benefits for the week ending April 7, 2018, and received \$473.00 in unemployment insurance benefits for the week. Following an investigation with the claimant and employer, the Agency determined the claimant had failed to report his wages earned with Russell Construction Company for the week ending April 7, 2018 (which coincided with his start date), and had he reported, he would not have been eligible for benefits. Based on the evidence presented, the administrative law judge concludes the claimant was overpaid benefits in the amount of \$473.00, which must be repaid.

**DECISION:**

The June 7, 2018, (reference 01) unemployment insurance decision is affirmed. The claimant was overpaid \$473.00 in unemployment insurance benefits, which must be repaid.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

jlb/scn