

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHAEL POMMER
Claimant

APPEAL 22A-UI-07538-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMC MECHANICAL
Employer

OC: 10/25/20
Claimant: Appellant (2)

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Code § 96.19(38) – Total and Partial Unemployment
Iowa Code § 96.5(5)-Compensation
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On March 29, 2022, the claimant/appellant filed an appeal from the March 17, 2022, (reference 04) unemployment insurance decision that concluded the claimant was overpaid unemployment insurance benefits in the amount of \$493.00 as a result of incorrectly reported wages decision. The parties were properly notified of the hearing. A telephone hearing was held on May 4, 2022. The claimant participated. The employer participated through Michelle Watson. Administrative notice was taken of the claimant's unemployment insurance benefits records. Exhibit D-1 was admitted into the record.

ISSUES:

- I. Is claimant's appeal timely?
- II. Is claimant totally, partially or temporarily unemployed?
- III. Did the claimant correctly report wages earned?
- IV. Was the claimant was overpaid benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The unemployment insurance decision was mailed to the appellant's address of record on March 17, 2022. Claimant's father was ill and he was out of town beginning on March 1, 2022. Claimant did not have anyone to check his mail for him while he was gone. Claimant's father died and his funeral was held on March 28, 2022. On March 29, 2022, claimant received the letter when he returned to his home. Claimant filed the appeal on March 29, 2022, the same day he received it. The appeal deadline was March 28, 2022.

Claimant filed an initial claim for unemployment insurance benefits effective October 25, 2020. Claimant's weekly benefit amount is \$493.00. Claimant worked for the employer as a plumber. Claimant worked full time and earned \$24.00 per hour.

On October 26, 2020, claimant worked for two and ½ hours. Claimant was notified by the employer he was terminated. Claimant reported on his weekly claim that he earned \$20.00 from October 25, 2020, through October 31, 2020. Claimant received his full weekly benefit amount of \$493.00 for the week ending October 31, 2020. Claimant did not perform work for any other employer.

Iowa Workforce Development (IWD) sent a wage request to the employer for claimant. The request asked employer to report the wages claimant earned from October 25, 2020, through October 31, 2020. The employer reported claimant earned \$780.00 for the week. (Exhibit D-1). During the hearing the employer through Executive Coordinator, Michelle Watson, testified claimant did not earn any wages from October 25, 2020 through October 31, 2020. Claimant did not turn in his timecard and was not paid for the hours he worked that week.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is.

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The appellant did not have an opportunity to appeal the unemployment insurance decision because the decision was not received in a timely fashion. Without timely notice of a

disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The appellant filed the appeal the same day of receipt. Therefore, the appeal shall be accepted as timely.

The next issue is whether the claimant was partially, totally or temporarily unemployed and eligible for benefits. For the reasons that follow, the administrative law judge concludes claimant was partially unemployed for the week ending October 31, 2020, and eligible for benefits.

Iowa Code section 96.3(3) provides:

3. Partial unemployment. An individual who is partially unemployed in any week as defined in section 96.1A, subsection 38, paragraph "b", and who meets the conditions of eligibility for benefits shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. The benefits shall be rounded to the lower multiple of one dollar.

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 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.

For the week ending October 31, 2020, claimant was partially unemployed and, thus, eligible for partial benefits. Claimant worked two and ½ hours and earned \$60.00 in wages even though he was not paid for the work he performed. The wages he earned is below his weekly benefit amount plus \$15.00. Claimant received a full benefit payment for the week ending October 31, 2020.

\$60.00 (wages) - \$123.00 (25% of WBA) = \$0.00 (wage deduction)
\$493.00 (WBA) - \$0.00 (wage deduction) = \$493.00 (partial weekly benefit amount)

Based on the above partial week calculation claimant is entitled to the full benefit amount. Claimant has not been overpaid unemployment benefits due to incorrectly reported wages with the employer.

DECISION:

The claimant's appeal is timely.

The March 17, 2022, (reference 04) unemployment insurance decision is REVERSED. Claimant has not been overpaid regular unemployment insurance benefits in the gross amount of \$493.00 for the one-week period between October 25, 2020 and October 31, 2020. These benefits shall not be repaid.

A handwritten signature in black ink that reads "Carly Smith". The signature is fluid and cursive, with a horizontal line extending from the end of the name.

Carly Smith
Administrative Law Judge

May 17, 2022

Decision Dated and Mailed

cs/ac