

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**RICCI R BROWN**  
Claimant

**ULTA SALON COSMETICS**  
Employer

**APPEAL 22A-UI-05138-B2-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/04/21  
Claimant: Appellant (2)**

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Code § 96.5(5) – Wages  
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the February 16, 2022, (reference 02) unemployment insurance decision that concluded claimant was overpaid \$3,278.00 in regular unemployment insurance benefits. After proper notice, a telephone hearing was conducted on April 22, 2022. The claimant participated. Official notice of the administrative records was taken.

**ISSUES:**

Is claimant overpaid benefits?  
Is the claimant totally, partially or temporarily unemployed?  
Did the claimant correctly report wages earned?  
Is the claimant eligible for benefits based on the wages earned?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant established a claim for unemployment insurance benefits with an effective date of April 4, 2021.

Claimant's weekly benefit amount (WBA) was \$512.00.

Claimant filed weekly continued claims for the period of April 11, 2021 and July 3, 2021. During this period, claimant was totally unemployed.

IWD conducted an audit of the claim, and contacted the employer to verify the claimant's wages earned with employer, Ulta Salon Cosmetics (See fact-finding documents). A review of the administrative file reflects the claimant did not report the same wages at the employer. Ulta was asked to participate in the hearing, but did chose not to do so. Ulta, through its processing partner ADP, provided statements claimant was paid a flat amount each week form April 4, 2021 through July 3, 2021. There were no business records supplied in support of the ADP claims.

Claimant supplied a last pay stub from Ulta showing her last two week pay period was ended on April 17, with claimant earning half her normal approximate pay for that period. She also provided a W-2 statement showing the year-to-date statement from her last pay stub for the weeks ending April 17 was the same amount as the year end amount of pay recorded on her W-2. Ulta reported no wages on the W-2 after April 17, 2021.

Claimant also provided bank statements from March through July of 2021. They show Ulta pay up to the final pay date in April, and no pay thereafter.

Because the claimant did not report earning the same amount of wages as employer stated during the period between April 18, 2021 and July 3, 2021, an overpayment of \$3,278.00 was determined by IWD (See fact-finding documents). Claimant did dispute wages reported by employer.

The agency established the overpayment based upon the following wages and payments made to the claimant: (See fact-finding documents)(The administrative law judge has only filled in for the first and last week of the reported overpayment as all other weeks contain exactly the same information.)

WEEK ENDING	WAGES REPORTED	WAGES EARNED	BENEFITS PAID	BENEFITS ENTITLED	OVERPAYMENT
4-24-21	0	426.00	512.00	214.00	298.00
7-3-21	0	426.00	512.00	214.00	298.00
			NET TOTAL		3,278.00

### REASONING AND CONCLUSIONS OF LAW:

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

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 37, 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 § 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. *This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c".* The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3, are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

(emphasis added).

Iowa Code § 96.19(38)b provides:

As used in this chapter, unless the context clearly requires otherwise:

38. "Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work, or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

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

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.

The credible evidence in this case is that claimant received \$5,632.00 in regular unemployment insurance benefits based upon wages initially reported. However, following an audit by IWD, it was determined that claimant actually earned more wages than initially reported. This audit was shown to be incorrect through the documents forwarded by claimant. No evidence was presented by the employer to refute claimant's evidence.

Based upon the wages earned, claimant was eligible for all benefits received because claimant was totally unemployed during the period in question and received no wages. As a result, the claimant was not overpaid benefits in the amount of \$3,278.00. The administrative law judge concludes therefore, that the overpayment was not correctly calculated. The overpayment decision in this matter is reversed.

**DECISION:**

The February 16, 2022 (reference 02) is reversed. The claimant was not overpaid \$3,278.00 in regular unemployment insurance benefits. The claimant is entitled to all benefits received.



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Blair A. Bennett  
Administrative Law Judge

April 29, 2022  
Decision Dated and Mailed

bab/mh