

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHRIS M SCHULTZ
Claimant

APPEAL 18A-UI-08737-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 04/17/16
Claimant: Appellant (3R)

Iowa Code § 96.3(7) – Overpayment of Benefits

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the August 10, 2018 (reference 03) Iowa Workforce Development (“IWD”) unemployment insurance decision that found claimant was overpaid unemployment insurance benefits because claimant incorrectly reported, or failed to report, earnings from JM Adjustment Services LLC (“JM Adjustment”) and City of Farley between May 15, 2016 and November 26, 2016. The parties were properly notified of the hearing. A telephone hearing was held on September 5, 2018. The claimant participated personally. Sean Clark participated on behalf of IWD. IWD Exhibits 1 - 8 were admitted. The administrative law judge took official notice of the claimant’s unemployment insurance benefits records.

ISSUE:

Did IWD correctly determine that 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 an initial claim for unemployment insurance benefits with an effective date of April 17, 2016. Claimant’s weekly benefit amount for that benefit year was \$463.00. His weekly benefit amount was determined, in part, from wages reported by JM Adjustment. See Exhibit 4. The amount of wages reported by JM Adjustment in the second quarter of 2015 was \$1,025.88. See Exhibit 4. The amount of wages reported by JM Adjustment in the third quarter of 2015 was \$1,239.75. See Exhibit 4. The amount of wages reported by JM Adjustment in the fourth quarter of 2015 was \$1,421.00. See Exhibit 4.

IWD conducted an audit and discovered that claimant received wages from both the City of Farley and JM Adjustment during the period of April 17, 2016 through December 3, 2016 but incorrectly reported the wages earned. IWD received a recheck of wage records from the City of Farley that was certified correct by Ashley Jasper on May 1, 2018. See Exhibit 2. Claimant does not dispute the amount of wages listed by City of Farley as being the correct wages

earned by him during that period. See Exhibit 2. IWD also received a recheck of wage records from JM Adjustment. See Exhibit 2. JM Adjustment listed claimant's job title as field agent.

Claimant spoke with Mr. Clark regarding the investigation and his employment with JM Adjustment. Claimant explained to Mr. Clark that his job required him to travel to residences to meet with consumers regarding their past due debt. Claimant did not collect money on the past due debt from the consumers but rather gathered current contact information. For each of these jobs that claimant accepted, his payment for the job was limited to the maximum amount listed for the job.

Sometime prior to May 15, 2016, claimant was classified as an independent contractor for JM Adjustment and receiving a tax form 1099 for all payments received from JM Adjustment. JM Adjustment changed its pay structure and informed claimant that he would have to report hours worked on each specific job and he would receive a paycheck, with federal and state tax deductions applicable, for the hours he listed as worked for each specific job. Claimant's hourly rate of pay was \$7.25.

In addition, claimant would receive a bonus payment at the end of each month, to which he received a tax form 1099 at the end of the year. If claimant completed the job in less than the amount of time it took at \$7.25 per hour to reach the maximum agreed upon payout for the job, claimant would receive the difference, up to the maximum payout amount, in the bonus check at the end of the month. However, because each job had a maximum payout, if claimant reported that he worked more hours at \$7.25 per hour than the job paid, claimant would incur a loss on his end of the month bonus payment.

If a job paid a maximum payout of \$20.00 and claimant reported he worked two hours on the job, he would receive a bi-weekly paycheck for \$14.50 and the remaining \$5.50 would be paid to him in the form of a non-wages bonus check at the end of the month. However, if a job paid a maximum payout of \$20.00 and claimant reported he worked three hours on the job, he would receive a bi-weekly paycheck for \$21.75 and the additional \$1.75 would be deducted from his gross non-wages bonus check amount from other jobs at the end of the month. If claimant did not have any additional jobs during the month that led to a bonus check, he would owe the company \$1.75.

Mr. Clark spoke to the employer's representative from JM Adjustment when it completed a recheck with the employer to verify the claimant's wages earned. JM Adjustment confirmed that claimant's pay structure at JM Adjustment was such that the claimant received the hourly rate of pay for the amount of hours he reported each week, plus the non-wage bonus at the end of the month dependent upon whether he logged more or less hours than the maximum payout for each specific job. Any deductions that were taken back from claimant at the end of specific jobs were not reported to IWD in the employer recheck, only the gross hours reported were included in the employer's recheck of wage records.

However, claimant did not present evidence of what specific amount of deductions were taken from his hourly wages in the form of a deduction from his gross non-wage bonus check at the end of each month during the period of April 17, 2016 through December 3, 2016. Claimant only presented testimony that he believed the deductions were not accounted for when the employer listed his gross wages earned in the recheck.

It is noted that during claimant's benefit year, he exhausted his maximum benefit amount of \$12,038.00 during the week-ending December 3, 2016 and no further weekly-continued claims were filed as he had reached his maximum benefit amount. The following chart includes the wages earned as reported by both employers, benefits paid, benefits he was entitled to, overpayment, and underpayment totals for the period in question.

| WEEK ENDING | WAGES EARNED (JM ADJUSTMENT) | WAGES EARNED (CITY OF FARLEY) | BENEFITS PAID | BENEFITS ENTITLED | UNDERPAYMENT | OVERPAYMENT |
|----------------|------------------------------------|-------------------------------------|-------------------|----------------------|---------------|-----------------|
| 04/23/2016 | 254.00 | 400.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 04/30/2016 | 109.00 | 0.00 | 422.00 | 463.00 | 41.00 | 0.00 |
| 05/07/2016 | 87.00 | 293.00 | 192.00 | 198.00 | 6.00 | 0.00 |
| 05/14/2016 | 65.00 | 124.00 | 389.00 | 389.00 | 0.00 | 0.00 |
| 05/21/2016 | 0.00 | 248.00 | 331.00 | 330.00 | 0.00 | 1.00 |
| 05/28/2016 | 203.00 | 491.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 06/04/2016 | 94.00 | 116.00 | 463.00 | 368.00 | 0.00 | 95.00 |
| 06/11/2016 | 29.00 | 239.00 | 339.00 | 310.00 | 0.00 | 29.00 |
| 06/18/2016 | 189.00 | 289.00 | 289.00 | 100.00 | 0.00 | 189.00 |
| 06/25/2016 | 551.00 | 116.00 | 463.00 | 0.00 | 0.00 | 463.00 |
| 07/02/2016 | 210.00 | 120.00 | 459.00 | 248.00 | 0.00 | 211.00 |
| 07/09/2016 | 73.00 | 120.00 | 458.00 | 385.00 | 0.00 | 73.00 |
| 07/16/2016 | 102.00 | 0.00 | 463.00 | 463.00 | 0.00 | 0.00 |
| 07/23/2016 | 232.00 | 194.00 | 384.00 | 152.00 | 0.00 | 232.00 |
| 07/30/2016 | 247.00 | 0.00 | 463.00 | 331.00 | 0.00 | 132.00 |
| 08/06/2016 | 225.00 | 116.00 | 462.00 | 237.00 | 0.00 | 225.00 |
| 08/13/2016 | 51.00 | 0.00 | 463.00 | 463.00 | 0.00 | 0.00 |
| 08/20/2016 | 65.00 | 0.00 | 463.00 | 463.00 | 0.00 | 0.00 |
| 08/27/2016 | 283.00 | 0.00 | 463.00 | 295.00 | 0.00 | 168.00 |
| 09/03/2016 | 290.00 | 338.00 | 240.00 | 0.00 | 0.00 | 240.00 |
| 09/10/2016 | 44.00 | 264.00 | 314.00 | 270.00 | 0.00 | 44.00 |
| 09/17/2016 | 174.00 | 0.00 | 463.00 | 404.00 | 0.00 | 59.00 |
| 09/24/2016 | 290.00 | 95.00 | 463.00 | 193.00 | 0.00 | 270.00 |
| 10/01/2016 | 239.00 | 0.00 | 463.00 | 339.00 | 0.00 | 124.00 |
| 10/08/2016 | 44.00 | 132.00 | 446.00 | 402.00 | 0.00 | 44.00 |
| 10/15/2016 | 44.00 | 231.00 | 347.00 | 303.00 | 0.00 | 44.00 |
| 10/22/2016 | 290.00 | 132.00 | 446.00 | 156.00 | 0.00 | 290.00 |
| 10/29/2016 | 290.00 | 231.00 | 347.00 | 0.00 | 0.00 | 347.00 |
| 11/05/2016 | 239.00 | 136.00 | 446.00 | 203.00 | 0.00 | 243.00 |
| 11/12/2016 | 80.00 | 462.00 | 116.00 | 0.00 | 0.00 | 116.00 |
| 11/19/2016 | 203.00 | 66.00 | 463.00 | 309.00 | 0.00 | 154.00 |
| 11/26/2016 | 290.00 | 0.00 | 463.00 | 288.00 | 0.00 | 175.00 |
| 12/03/2016 | 290.00 | 0.00 | 55.00 | 288.00 | 233.00 | 0.00 |
| | | | SUBTOTAL: | | 280.00 | 3,968.00 |
| | | | NET TOTAL: | | | 3,688.00 |

Claimant contends that he is an independent contractor with JM Adjustment because he does not receive mileage reimbursement, expends his own money for supplies, and has the ability to refuse jobs that the employer offers which are outside of his local geographical area. It does not appear from the administrative records available to the administrative law judge that any investigation regarding the employer/employee relationship and whether the claimant is an

independent contractor for JM Adjustment has been conducted by the Tax Bureau of Iowa Workforce Development.

REASONING AND CONCLUSIONS OF LAW:

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

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.
 - 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.

Claimant did not present credible testimony as to what specific amounts were deducted from his wages during the period of April 17, 2016 through December 3, 2016 by JM Adjustment. As such, the amounts listed by JM Adjustment in Exhibit 2 are the most credible evidence of the wages earned by claimant from JM Adjustment during this period. As such, claimant is overpaid benefits of \$3,688.00 due to incorrectly reporting wages earned from City of Farley and JM Adjustment for the period of April 17, 2016 through December 3, 2016.

DECISION:

The August 10, 2018 (reference 03) unemployment insurance decision is modified in favor of respondent. The claimant is overpaid benefits of \$3,688.00 between April 17, 2016 and December 2, 2016.

REMAND: The employer/employee relationship, specifically whether the claimant was an independent contractor with JM Adjustment, as delineated in the findings of fact is remanded to the Tax Bureau of Iowa Workforce Development for an initial investigation and determination.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs