

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JOHN H LEE
Claimant

APPEAL NO. 22A-UI-06147-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

JOHN LEE PHOTOGRAPHY INC
Employer

OC: 04/12/20
Claimant: Appellant (4)

Iowa Code Section 96.3(7) – Overpayment of Benefits

STATEMENT OF THE CASE:

On March 10, 2022, John Lee (claimant) filed a timely appeal from the March 7, 2022 (reference 01) decision that held Mr. Lee was overpaid \$585.00 in regular state benefits for three weeks between April 12, 2020 and May 2, 2020, based on the deputy's conclusion that Mr. Lee failed to report wages earned with John Lee Photography, Inc. during those weeks. After due notice was issued, a hearing was held on April 20, 2022. Mr. Lee participated in the hearing as both claimant and employer and was represented by Sherry Griggs. Mr. Lee and Ms. Griggs testified. Exhibits A through C were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBIN, KPYX, KCCO, WAGE-A, and the October 26, 2020 employer response to the October 14, 2020 Request of Wage Records.

ISSUE:

Whether the claimant was overpaid \$585.00 in regular state benefits for three weeks between April 12, 2020 and May 2, 2020, based on the deputy's conclusion that Mr. Lee failed to report wages earned with John Lee Photography, Inc. during those weeks.

FINDINGS OF FACT:

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

John Lee (claimant) owns and operates John Lee Photography, Inc. (employer), a portrait photography business located in Newton, Iowa. Mr. Lee was at all relevant times the corporation's sole employee. Dimensions Accounting, Inc. provides payroll accounting services to John Lee Photography, Inc. Sherry Griggs owns and operates Dimensions Accounting. Mr. Lee and the accounting firm have payroll set up so that Mr. Lee receives a \$750.00 biweekly employee salary, effectively \$375.00 per week.

Mr. Lee established an original claim for benefits that was effective April 12, 2020, in response to a COVID-19 related sudden downturn photography projects. Mr. Lee's business was not subject to a government-mandated shutdown. Mr. Lee performed work for the business on April 13-15, 2022, Monday through Wednesday, prior to temporarily ceasing operations. At that

point, Mr. Lee, as president of corporation, effectively temporarily laid himself off. On April 30, 2020, the corporation paid Mr. Lee \$750.00 that included \$225.00 in salary for April 13-15, 2022. Mr. Lee did not generate any business during the weeks that ended April 25, 2022 and May 2, 2022. The corporation did not pay Mr. Lee a salary for those two weeks.

At the time Mr. Lee established the original claim for benefits, Iowa Workforce Development set the weekly benefit amount for regular benefits at \$195.00. Iowa Workforce Development paid that amount in regular benefits to Mr. Lee for each of the six weeks between April 12, 2020 and May 23, 2020. IWD also paid Mr. Lee \$600.00 in weekly Federal Pandemic Unemployment Compensation (FPUC) for each of those same six weeks. Mr. Lee discontinued his claim after the benefit week that ended May 23, 2020.

On October 14, 2020, Iowa Workforce Development mailed a Request of Wage Records to John Lee Photography, Inc. regarding the six weeks between April 12, 2020 and May 23, 2020. Mr. Lee forwarded the document to Dimensions Accounting for a response. Ms. Griggs added weekly work hours and gross weekly wage information for the six weeks in question. Ms. Griggs documented that Mr. Lee had worked full-time during each of the three weeks between April 12, 2020 and May 2, 2020 and that the corporation paid Mr. Lee \$375.00 in wages for each of those three weeks. Ms. Griggs documented that Mr. Lee worked zero hours and was paid no wages for each of the three weeks between May 3, 2020 and May 23, 2020. On October 26, 2020, Ms. Griggs signed to certify, as follows: "I HEREBY CERTIFY that the above information was obtained from the official payroll records for this individual and is true and correct to the best of my knowledge." Dimensions Accounting, Inc. or John Lee Photography, Inc. submitted the completed Request of Wage Records form to IWD, which then used the form to redetermine Mr. Lee's eligibility for benefits for the three weeks between April 12, 2020 and May 2, 2020.

Ms. Griggs now advises the information she provided and certified as accurate on the Request of Wage Records form was erroneous. Ms. Griggs advises that when she completed the IWD form she did not factor the lag time between the pay period and the pay date. Ms. Griggs advises the payment issued on April 30, 2020 was for the period ending April 15, 2020 and that no wages were paid for the period of April 16, 2020 through May 2, 2020.

REASONING AND CONCLUSIONS OF LAW:

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.

Gross wages must be reported to Iowa Workforce Development as part of the weekly claim for the week in which the wages were earned. See Iowa Administrative Code rules 871-24.2(1)(g)(3)(2) and 871-24.2(2)(e)(2).

The reporting requirement is addressed in the 2019 Unemployment Insurance Claimant Handbook at page 8:

What to Report on the Weekly Claim?

You must report all gross earnings and gross wages on the weekly claim. Wages are reportable when earned, not when paid. Gross earnings or gross wages are your earnings before taxes or other payroll deductions are made. For additional information, please refer to the page on reportable income.

2019 Unemployment Insurance Claimant Handbook Updated 1-1-20.pdf.

Iowa Code section 96.1A(37) provides:

"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.

The claimant was overpaid \$195.00 in regular unemployment insurance benefits for the week that ended April 18, 2020. During that week the claimant earned \$225.00 in wages, which exceeded his weekly benefit amount by more than \$15.00. Based on the amount of wages earned that week, the claimant cannot be deemed partially unemployed that week and is not eligible for benefits for that week. The claimant must repay the \$195.00 in regular state benefits the claimant received for the week ending April 18, 2020.

The claimant was not overpaid regular state benefits for the weeks ending April 25, 2020 and May 2, 2020. During those weeks, the claimant was temporarily laid off and earned no wages.

DECISION:

The March 7, 2022 (reference 01) decision is MODIFIED in favor of the claimant as follows. The claimant was overpaid \$195.00 in regular state benefits for the week that ended April 18, 2020, due to the failure to report the \$225.00 in wages earned that week. The claimant must repay the overpaid regular state benefits. The claimant was not overpaid regular state benefits for the weeks that ended April 25, 2020 and May 2, 2020.



James E. Timberland
Administrative Law Judge

April 25, 2022
Decision Dated and Mailed

jet/kmj