

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STEPHEN M. HOUSTON II
Claimant

CORNY VU BAR LLC
Employer

APPEAL 22A-UI-07750-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20
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

STATEMENT OF THE CASE:

On March 31, 2022, the claimant/appellant filed an appeal from the March 29, 2022, (reference 01) unemployment insurance decision that concluded the claimant was overpaid unemployment insurance benefits in the amount of \$2,215.00 as a result of incorrectly reported wages. The parties were properly notified of the hearing. A telephone hearing was held on May 12, 2022. The hearing was held together with appeal 22A-UI-07751-CS-T and combined into one record. The claimant participated. The employer did not call in to participate. Administrative notice was taken of the claimant's unemployment insurance benefits records. Exhibit D-1 was admitted into the record.

ISSUES:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant filed an initial claim for unemployment insurance benefits effective April 5, 2020. Claimant's weekly benefit amount is \$443.00. Claimant worked for the employer as the general manager. Claimant was a salaried employee that earned \$850.00 per week. (Exhibit D-1).

Employer closed due to Covid-19 beginning March 16, 2020 per the governor's mandate. The employer kept claimant working through March 2020. Employer informed claimant that payroll had run out and that he needed to file for unemployment benefits. Claimant did not perform work for the employer or earn a salary from the employer from April 5, 2020 until he returned to work the week of June 14, 2020.

Iowa Workforce Development sent out a Request of Wage Records to employer on October 14, 2020. (Exhibit D-1). On October 23, 2020, the employer reported claimant earned \$637.50 each week for the weeks ending May 2, 2020, May 9, 2020, May 16, 2020, May 23, 2020, May 30, 2020, and June 6, 2020. (Exhibit D-1). The employer did not report the hours claimant worked for the employer during this time period. The employer was not present at the hearing to discuss their response to the Request of Wage Records and to verify its accuracy.

Claimant received his full weekly benefit amount for the weeks ending May 2, 2020, May 9, 2020, May 16, 2020, and June 6, 2020. (DBIN) No payment was issued for the week ending May 30, 2020, due to the claimant reporting that he received \$1002.00 in wages. (KCCO).

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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.

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.

For the weeks ending May 2, 2020, May 9, 2020, May 16, 2020, May 23, 2020, and June 6, 2020, the claimant was totally unemployed. The claimant testified that he did not perform work for the employer or any other employer during this time and no wages were payable to him. As a result, claimant is totally unemployed and is entitled to his full benefit amount each of these weeks. Claimant was not overpaid \$2,215.00 in state unemployment benefits.

DECISION:

The March 29, 2022 (reference 01) unemployment insurance decision is REVERSED. Claimant has not been overpaid regular unemployment insurance benefits in the gross amount of \$2,215.00 for the five-week period between April 26, 2020 and June 6, 2020.



Carly Smith
Administrative Law Judge

June 8, 2022

Decision Dated and Mailed

cs/mh

NOTE TO CLAIMANT: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits but who were unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.

ATTENTION: On May 11, 2021, Governor Reynolds announced that Iowa will end its participation in federal pandemic-related unemployment benefit programs effective June 12, 2021. The last payable week for PUA in Iowa is the week ending June 12, 2021. You may be eligible for benefits incurred prior to June 12, 2021. Additional information can be found in the press release at <https://www.iowaworkforcedevelopment.gov/iowa-end-participation-federal-unemployment-benefit-programs-citing-strong-labor-market-and>.