

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JOHN H LEE
Claimant

JOHN LEE PHOTOGRAPHY INC
Employer

APPEAL NO. 22A-UI-06148-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

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

Public Law 116-136, §2104 – Federal Pandemic Unemployment Compensation Overpayment

STATEMENT OF THE CASE:

On March 10, 2022, John Lee (claimant) filed a timely appeal from the March 7, 2022 (reference 02) decision that held Mr. Lee was overpaid \$1,800.00 in Federal Pandemic Unemployment Compensation (FPUC) 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 \$1,800.00 in Federal Pandemic Unemployment Compensation (FPUC) 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's eligibility for the FPUC benefits depended on his eligibility for the regular state benefits. 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.

On March 7, 2022, IWD issued a reference 01 decision that held the regular state benefits the claimant received for the three weeks between April 12, 2020 and May 3, 2020 were an overpayment of benefits. The reference 01 decision was modified in Appeal Number 22A-UI-06147-JT-T, to hold that the claimant was ineligible and overpaid regular state benefits for the week that ended April 18, 2020, but that the regular benefits the claimant received for the weeks that ended April 25, 2020 and May 2, 2020 were not an overpayment of benefits.

REASONING AND CONCLUSIONS OF LAW:

PL116-136, Sec. 2104 provides, in pertinent part:

(b) Provisions of Agreement

(1) Federal pandemic unemployment compensation.--Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any

week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to

(A) the amount determined under the State law (before the application of this paragraph), plus

(B) an additional amount of \$600 (in this section referred to as "Federal Pandemic Unemployment Compensation").

....

(f) Fraud and Overpayments

(2) Repayment.—In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled, the State shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation to the State agency, except that the State agency may waive such repayment if it determines that—

(A) the payment of such Federal Pandemic Unemployment Compensation was without fault on the part of any such individual; and

(B) such repayment would be contrary to equity and good conscience.

(3) Recovery by state agency —

(A) In general.—The State agency shall recover the amount to be repaid, or any part thereof, by deductions from any Federal Pandemic Unemployment Compensation payable to such individual or from any unemployment compensation payable to such individual under any State or Federal unemployment compensation law administered by the State agency or under any other State or Federal law administered by the State agency which provides for the payment of any assistance or allowance with respect to any week of unemployment, during the 3-year period after the date such individuals received the payment of the Federal Pandemic Unemployment Compensation to which they were not entitled, in accordance with the same procedures as apply to the recovery of overpayments of regular unemployment benefits paid by the State.

(B) Opportunity for hearing.—No repayment shall be required, and no deduction shall be made, until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the individual, and the determination has become final.

(4) Review.—Any determination by a State agency under this section shall be subject to review in the same manner and to the same extent as determinations under the State unemployment compensation law, and only in that manner and to that extent.

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 \$600.00 in FPUC 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 \$600.00 in FPUC benefits the claimant received for the week ending April 18, 2020, unless the claimant applies for and is approved for waiver of repayment of FPUC benefits. See below. The claimant was not overpaid FPUC benefits for the weeks ending April 25, 2020 and May 2, 2020, based on the determination that the regular benefits the claimant received for those weeks were not an overpayment and that the claimant was temporarily laid off during those two weeks.

DECISION:

The March 7, 2022 (reference 02) decision is MODIFIED in favor of the claimant as follows. The claimant was overpaid \$600.00 in FPUC benefits for the week that ended April 18, 2020, due to the failure to report the \$225.00 in wages earned that week and due to the claimant being ineligible for regular benefits for that week. The claimant must repay the overpaid FPUC benefits, unless the claimant applies for and is approved for waiver of repayment of FPUC benefits. See below. The claimant was not overpaid FPUC 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

Note to Claimant: This decision determines you have been overpaid FPUC under the CARES Act. 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. Additionally, instructions for requesting a waiver of this overpayment can be found at <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment>. If this decision becomes final and you are not eligible for a waiver, you will have to repay the benefits you received.