

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STACEY GUTIERREZ

Claimant

US FOODS

Employer

APPEAL 22A-UI-06385-B2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20

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 March 1, 2022, (reference 02) unemployment insurance decision that concluded claimant was overpaid \$1,410.00 in regular unemployment insurance benefits. After proper notice, a telephone hearing was conducted on May 9, 2022. The hearing was held together with Appeals 22A-UI-06388-B2-T. 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 March 22, 2020. Claimant's weekly benefit amount (WBA) was \$292.00.

Claimant filed weekly continued claims for the period of March 29, 2020 and August 29, 2020. During this period, claimant was temporarily unemployed.

IWD conducted an audit of the claim, and contacted the employer to verify the claimant's wages earned with employer, US Foods (See fact-finding documents). A review of the administrative file reflects the claimant did not report the same wages as the employer. Claimant participated in the hearing and stated that she did not work at all for employer after April 29, 2020. Claimant stated that she received one final payment in September – paying off her accrued sick leave and vacation.

Looking at claimant's weekly reports, said reports coincide with claimant's testimony, even though claimant did not remember what she'd reported. Employer's weekly reports did not make sense, and employer did not appear to testify to the veracity of its reports. One week claimant was reported having earned wages equivalent to working more hours than existed in a week. Many other weeks, claimant was reported to have earned less than ½ hour's wages.

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 Admin. Code r. 871-23.3(1) provides:

(1) "Wages" means all remuneration for personal services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. Wages also means wages in lieu of notice, separation allowance, severance pay, or dismissal pay. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rule 23.2(96).

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

7. Recovery of overpayment of benefits.

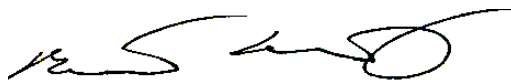
a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by 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 properly reported wages earned. Employer's documentation forwarded was not credible.

Based upon the wages earned, claimant was eligible for all benefits received. The administrative law judge concludes therefore, that the overpayment was not correctly calculated and claimant was not overpaid benefits.

DECISION:

The March 1, 2022 (reference 02) is reversed. The claimant was not overpaid \$1,410.00 in regular unemployment insurance benefits.



Blair A. Bennett
Administrative Law Judge

May 26, 2022
Decision Dated and Mailed

bab/scn