

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KEVIN WELDON
Claimant

C2C CONSTRUCTION INC
Employer

APPEAL 22A-UI-09015-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/07/21
Claimant: Appellant (2)

Iowa Code § 96.3(7) - Recovery of Benefit Overpayment
Iowa Code § 96.19(38) - Total, Partial and Temporary Unemployment
Iowa Code § 96.1A(37) - Total, Partial and Temporary Unemployment
Iowa Code § 96.5(5) - Payment - Other Compensation
Iowa Admin. Code r. 871-24.18 - Wage Earning Limitations

STATEMENT OF THE CASE:

Kevin Weldon, claimant/appellant, appealed the April 6, 2022, (reference 01) unemployment insurance decision finding claimant was overpaid regular unemployment benefits in the amount of \$4,472.00 for 8-weeks between February 7, 2021 and April 3, 2021, due to failing to report wages earned. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for May 23, 2022. Claimant personally participated. Employer, C2C Construction, Inc., participated through Brandon Utesch, owner. The following hearings were held together as part of a consolidated hearing: Appeals 22A-UI-09015-DH-T, and 22A-UI-09016-DH-T. Judicial notice was taken of the administrative record, including claimant's appeal and attachments.

ISSUES:

Is the claimant overpaid regular benefits which must be repaid?
Was the claimant totally, partially, or temporarily unemployed?
Did the claimant correctly report wages earned?
Is the claimant eligible for benefits based upon wages earned?
Were wages correctly deducted?

FINDINGS OF FACT:

Having heard the testimony and reviewed the evidence in the record, the undersigned finds:

Claimant filed a claim for unemployment insurance benefits with an effective date of February 7, 2021 due to being laid off from work around January 30, 2021, until recalled around April 26, 2021. Claimant's last paycheck before being laid off was dated February 3, 2021 and for the period starting January 17, 2021 and ending January 30, 2021. Claimant's first check back after the layoff was dated May 13, 2021 and for the period starting April 26, 2021 and ending May 8, 2021.

For the eight weeks between February 7, 2021 and April 3, 2021, claimant submitted claims and received \$559.00 in benefits for each week for a total of \$4,472.00 in regular unemployment benefits. He did not report wages for these weeks.

The department requested a wage record and the employer, through their accountant, Courtney Mesman, reported that claimant was paid wages for the weeks in question, that claimant failed to report the wages. The Employer reported claimant was paid \$1,307.69 for each of the eight weeks, for a total of \$10,461.52 in unreported wages. This resulted in a determination of a total overpayment of \$4,472.00 in regular benefits. However, the employer testified that if claimant had been paid, the accountant would be correct, but with the claimant being laid off, no payments were made, and the accountant incorrectly reported wages paid. Employer and Claimant both agree no wages were paid to claimant and the wages reported by the accountant on behalf of the employer should have all been \$0.00.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant failed to report wages. It is found that claimant did not fail to report wages as both employer and claimant agree claimant received no wages for the timeframe in question and the accountant's report was in error. Claimant is salaried and if worked, would have received this amount, but was laid off and received no wages.

Iowa Code section 96.5(5) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

5. Other compensation.

a. For any week with respect to which the individual is receiving or has received payment in the form of any of the following:

(1) Wages in lieu of notice, separation allowance, severance pay, or dismissal pay.

(2) Compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States.

(3) A governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment made under a plan maintained or contributed to by a base period or chargeable employer where, except for benefits under the federal Social Security Act or the federal Railroad Retirement Act of 1974 or the corresponding provisions of prior law, the plan's eligibility requirements or benefit payments are affected by the base period employment or the remuneration for the base period employment. However, this subparagraph shall only be applicable if the base period employer has made one hundred percent of the contribution to the plan.

b. Provided, that if the remuneration is less than the benefits which would otherwise be due under this chapter, the individual is entitled to receive for the week, if otherwise eligible, benefits reduced by the amount of the remuneration. Provided further, if benefits were paid for any week under this chapter for a period when benefits, remuneration or compensation under paragraph "a", subparagraph (1), (2), or (3), were paid on a retroactive basis for the same period, or any part thereof, the department shall recover the

excess amount of benefits paid by the department for the period, and no employer's account shall be charged with benefits so paid. However, compensation for service-connected disabilities or compensation for accrued leave based on military service by the beneficiary with the armed forces of the United States, irrespective of the amount of the benefit, does not disqualify any individual otherwise qualified from any of the benefits contemplated herein. A deduction shall not be made from the amount of benefits payable for a week for individuals receiving federal social security pensions to take into account the individuals' contributions to the pension program.

Here, claimant received payment of wages, for a total amount of \$0.00 in unreported wages for the timeframe in question.

The next issue in this case is whether the claimant is totally, partially, or temporarily unemployed. It is found that he was not unemployed for the week in question.

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

Claimant was totally unemployed for the weeks in question.

The last issues are whether claimant was eligible for benefits/overpaid benefits which are to be repaid. Claimant was eligible for benefits for the weeks in question that were paid therefore there was no overpayment as there were no wages earned.

Employer reports that claimant performed no work during the weeks in question, and/or received no payment for wages and vacation during the weeks in question. There are no overpayments and nothing to be repaid.

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.

Since claimant was eligible for full benefits for the weeks in question, as addressed above, the claimant was not overpaid benefits, and no repayment is required.

DECISION:

The April 6, 2022, (reference 01) unemployment insurance decision is **REVERSED**. Claimant correctly reported wages and was not overpaid benefits.



Darrin T. Hamilton
Administrative Law Judge

July 8, 2022

Decision Dated and Mailed

dh/abd

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. *There is no filing fee to file an appeal with the Employment Appeal Board.*

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may file a petition for judicial review in district court.

2. If you do not file an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at www.iowacourts.gov/efile. *There may be a filing fee to file the petition in District Court.*

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal. *No hay tarifa de presentación para presentar una apelación ante la Junta de Apelación de Empleo.*

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si no presenta una apelación de la decisión del juez ante la Junta de Apelación de Empleo dentro de los quince (15) días, la decisión se convierte en una acción final de la agencia y tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días. Puede encontrar información adicional sobre cómo presentar una petición en www.iowacourts.gov/efile. *Puede haber una tarifa de presentación para presentar la petición en el Tribunal de Distrito.*

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.