

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TREVA L GRAVES
Claimant

AVERA@HOME
Employer

APPEAL 22A-UI-10117-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (1-R)

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment

STATEMENT OF THE CASE:

On April 19, 2022, claimant Treva L. Graves filed an appeal from the April 11, 2022 (reference 03) unemployment insurance decision that found she was overpaid \$1,000.00 in regular unemployment insurance benefits for the two-week period ending August 22, 2020. The parties were properly notified of the hearing. A telephonic hearing was held at 1:00 p.m. on Monday, June 6, 2022. Appeal numbers 22A-UI-10117-LJ-T and 22A-UI-10118-LJ-T were heard together and created one record. The claimant, Treva L. Graves, participated. The employer, Avera@Home, did not appear for or participate in the hearing. The administrative law judge took official notice of the administrative record.

ISSUES:

Was the claimant totally, partially, or temporarily unemployed?
Was the claimant overpaid regular unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for Avera@Home in August 2019. Throughout her employment, she worked for the employer as a PRN speech pathologist. The employer would call her when it had a client for her to see, and the claimant had the ability to accept or reject each assignment. Claimant only worked for Avera@Home four or five times each year.

Claimant worked some hours during the two-week period between August 9, 2020 and August 22, 2020. Claimant had 7.2 “regular hours” and 7.3 “training hours” during this timeframe. Claimant was unable to state the days on which she worked these hours. Documentation in the administrative record indicates claimant worked 13.9 of her hours during the week ending August 15, 2020; and the other 0.6 of her hours during the week ending August 22, 2020. Claimant did not report any of the wages she earned. She explained, “I think that what I was thinking was that being a PRN employee, the unemployment benefits would somehow be adjusted.”

Claimant received \$500.00 in regular unemployment insurance benefits for the week ending August 15, 2020. She received \$500.00 in regular unemployment insurance benefits for the week ending August 22, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant has been overpaid benefits.

Iowa Code § 96.19(38) 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 Admin. Code r. 871-24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

Looking specifically at the two-week period between August 9, 2020 and August 22, 2020, claimant was neither totally nor partially unemployed. Claimant worked hours and earned wages each week; she was not totally unemployed. She continued to be employed with her PRN employer and was working precisely as contemplated in her contract of hire.

Iowa Code § 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.

b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

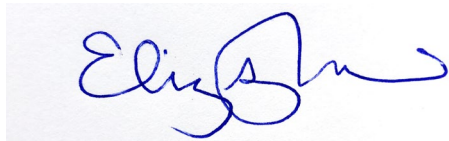
The administrative law judge concludes that the claimant has been overpaid regular unemployment insurance benefits in the amount of \$1,000.00. That amount must be repaid to the agency.

DECISION:

The April 11, 2022 (reference 03) unemployment insurance decision is affirmed. The claimant has been overpaid unemployment insurance benefits in the amount of \$1,000.00 and is obligated to repay the agency those benefits.

REMAND:

The issue of claimant's overall eligibility for benefits as a PRN employee is remanded to the Benefits Bureau for determination.



Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau

June 7, 2022
Decision Dated and Mailed

lj/lj