

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building, 4TH Floor
Des Moines, Iowa 50319
eab.iowa.gov**

BREANNE D BARNUM

Claimant

and

JACKSON HEWITT

Employer

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HEARING NUMBER: 22B-UI-07437

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.6-2, 96.3-7

DECISION

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds the administrative law judge's decision is correct. With the following modification, the administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED** with the following **MODIFICATION**:

The Board adds the following to the **Findings of Fact**: The \$612.00 for each week of the two weeks from May 5-18, 2019 (a total of \$1,224.00) that Claimant was paid was in the form of a bonus paid for services rendered prior to May of 2019.

The Board adds the following analysis to the **Conclusions of Law**:

For benefit qualification purposes “[w]ages earned but not paid during the calendar quarter shall be considered as wages for employment in the quarter paid.” 871 IAC 23.2(2). This is for deciding if a Claimant is monetarily eligible, and for determining the base period employers, and for determining the benefit amount. For those purposes what counts is when the check is cut, not when the work was done. The reason for this is obviously in part because these calculations are based on wage records reported by Iowa Employers on a quarterly basis. Since Employer payroll records are concerned with when checks get cut, monetary

determinations are made on a “when paid” not a “when earned” basis. 871 IAC 23.2(2). On the other hand, when wages are used to affect a benefit calculation, or to determine if a Claimant is partially unemployed in a given week, it is a different story. The rule provides:

Deductions from unemployment insurance payments are on a “when earned” basis rather than on a “when paid” basis. Deferred wages currently paid which are based on earnings from a prior period are not deductible on a current week claimed pursuant to Iowa Code section 96.19(9)“b” and paragraph 24.13(2)“o.”

871 IAC 24.52(8). We note that Code §96.19(9)(b) no longer exists, but it used to be the Code section now appearing at Iowa Code §96.1A(37)(b). *Compare* Iowa Code §96.19(9)(b) (1987) *with* Iowa Code §96.1A(37)(b) (2022). Also rule 24.13(2)“o” does not exist. It formerly stated “Deferred wage compensation. Remuneration received by the claimant for wages earned in a prior period shall not be deductible in a subsequent period.” IAB 1/30/85 ARC 5275 (adding 370 IAC 4.13(2)). This is now found in substance at 24.13(4)(k): “Deferred wage compensation. Remuneration received by the individual for wages earned in a period prior to the individual’s claim for benefits shall not be deductible during the period in which the individual is claiming benefits.” Thus it is clear from rule 24.52(8) that “[d]eductions from unemployment insurance payments are on a ‘when earned’ basis rather than on a ‘when paid’ basis.” 871 IAC 24.52(8); *see also Hartmann v. IWD*, 10-IWDUI-061 <http://decisions.iowaworkforce.org/ui/2010/01198.X.PDF>; *Claimant Handbook, A Guide to Unemployment Insurance Benefits* p. 4 (“report all wages...when they are earned, not when payment is received”). We note also the language in Iowa Code §96.3(3) setting out the offset refers to “that part of wages payable to the individual with respect to that week” - not to wages *paid* that week but rather *payable with respect to* that week. And if this is not clear enough the rule on bonus states:

24.13(4) Nondeductible payments from benefits. The following payments are not considered as wages and are not deductible from benefits:

b. Bonuses. The bonus payment is only nondeductible when based on service performed by the individual before the period in which the individual is also claiming benefits.

871 IAC 24.52(8). With this understood, the evidence shows that for the two weeks of May 5-18, 2019 the Claimant received a bonus, but that bonus was based on services performed before May 1, 2019. This being the case the wages paid were *not* deductible for weeks after May 1, 2019. Further, a total week of unemployment is a “week in which an individual performs no work and *earns* no wages.” 871 IAC 24.1(139)(c)(emphasis added). The Claimant earned no wages in the weeks in question, but was paid a bonus. She was unemployed, and received the bonus for a “prior period” and so the Claimant has no overpayment for these two weeks.

DECISION:

The Administrative Law Judge's decision of June 13, 2022 is **AFFIRMED AS MODIFIED**. The Claimant failed to correctly report wages and was overpaid \$1,058 for the two weeks from June 16, 2019 to June 29, 2019. The Claimant is not overpaid for the two weeks from May 5, 2019 to May 18, 2019. The Claimant's total overpayment is \$1,058.

James M. Strohman

Ashley R. Koopmans

Myron R. Linn

RRA/fnv