

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DEBORAH J ZIMMERMAN
Claimant

FIRST CAPITAL BAKING INC.
Employer

APPEAL 21A-UI-22046-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 08/15/21
Claimant: Appellant (1)**

Iowa Code §96.3(4) and (5)- Determination of Benefits/Duration of Benefits
Iowa Admin. Code r. 871-23.2(2)-Wages for Employment

STATEMENT OF THE CASE:

On October 5, 2021, the claimant/appellant filed an appeal from the September 29, 2021, (reference 03) unemployment insurance decision that found the wages reported by the employer were reported correctly. The parties were properly notified about the hearing. A telephone hearing was held on December 6, 2021. Claimant participated at the hearing through attorney Emily Wilson. Employer participated through Dan Serra. Administrative notice was taken of claimant's unemployment insurance benefits records. Exhibit A & B were admitted into the record.

ISSUE:

Did the employer properly report wages in the quarter they were earned or paid?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed an original claim for unemployment insurance benefits effective August 15, 2021.

Claimant's base period wages for her August 15, 2021, claim include the second quarter of 2020 through the first quarter of 2021. The claimant disputes the wages earned in the first quarter of 2021.

Claimant was hired by employer to be their plant manager. This was a start up company that did not have a plant in the state of Iowa. The employer was trying to locate a building that would house their plant. On January 27, 2021, claimant was notified by phone that she was hired for the position. The parties agreed that claimant would receive \$75,000 per year and an annual \$5,000 a year bonus. Claimant's salary was to be paid to her weekly over the course of the year.

On February 9, 2021, the employer reached out to claimant and started the process of onboarding claimant as an employee. The parties dispute when claimant began working for the employer. The claimant believes she began employment on February 12, 2021. Claimant submitted a document with her time that she claims she worked for the employer. (Exhibit B). The employer believes claimant began working for the employer on March 25, 2021. The first paycheck that

claimant received was April 2, 2021. Claimant has not been paid for any hours worked prior to March 25, 2021. Claimant also worked full time for Blackhawk Services Corp. during the first quarter of 2021. The claimant did not resign from her position with Blackhawk Services Corp. until March 22, 2021. Blackhawk Services Corp. reported claimant's wages as \$12,692.00. (WAGE A).

Claimant has zero dependents, and her weekly benefit amount is \$531.00 per week.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code section 96.3(4) provides:

4. Determination of benefits. With respect to benefit years beginning on or after July 1, 1983, an eligible individual's weekly benefit amount for a week of total unemployment shall be an amount equal to the following fractions of the individual's total wages in insured work paid during that quarter of the individual's base period in which such total wages were highest. The director shall determine annually a maximum weekly benefit amount equal to the following percentages, to vary with the number of dependents, of the statewide average weekly wage paid to employees in insured work which shall be effective the first day of the first full week in July:

If the number of dependents is:	The weekly benefit amount shall equal the following fraction of high quarter wages:	Subject to the following maximum percentage of the statewide average weekly wage.
0	1/23	53%
1	1/22	55%
2	1/21	57%
3	1/20	60%
4 or more	1/19	65%

The maximum weekly benefit amount, if not a multiple of one dollar shall be rounded to the lower multiple of one dollar. However, until such time as sixty-five percent of the statewide average weekly wage exceeds one hundred ninety dollars, the maximum weekly benefit amounts shall be determined using the statewide average weekly wage computed on the basis of wages reported for calendar year 1981. As used in this section, "dependent" means dependent as defined in section 422.12, subsection 1, paragraph "a", as if the individual claimant was a taxpayer, except that an individual claimant's nonworking spouse shall be deemed to be a dependent under this section. "Nonworking spouse" means a spouse who does not earn more than one hundred twenty dollars in gross wages in one week.

Iowa Code section 96.3(5)a provides:

a. Duration of benefits. The maximum total amount of benefits payable to an eligible individual during a benefit year shall not exceed the total of the wage credits accrued to the individual's account during the individual's base period, or twenty-six times the individual's weekly benefit amount, whichever is the lesser. The director shall maintain a separate account for each individual who earns wages in insured work. The director shall compute wage credits for each individual by crediting the individual's account with one-third of the wages for insured work paid to the individual during the individual's base period. However, the director shall recompute wage credits for an individual who is laid off due to the individual's employer going out of business at the factory, establishment, or other premises at which the individual was last employed, by crediting the individual's account with one-half, instead of one-third, of the wages for insured work paid to the individual during the individual's base period. Benefits paid to an eligible individual shall be charged against the base period wage credits in the individual's account which have not been previously charged, in the inverse chronological order as the wages on which the wage credits are based were paid. However if the state "off" indicator is in effect and if the individual is laid off due to the individual's employer going out of business at the factory, establishment, or other premises at which the individual was last employed, the maximum benefits payable shall be extended to thirty-nine times the individual's weekly benefit amount, but not to exceed the total of the wage credits accrued to the individual's account.

Iowa Admin. Code r. 871-23.2(2) provides:

Definition of wages for employment during a calendar quarter.

(2) Wages paid. Wages for employment during a calendar quarter consist of wages paid during the calendar quarter. ***Wages earned but not paid during the calendar quarter shall be considered as wages for employment in the quarter paid.*** The Employer's Contribution and Payroll Report, Form 65-5300, shall be used as prima facie evidence of when the wages were paid. If the wages are not listed on the 65-5300, they shall be considered as paid:

- a. On the date appearing on the check.
- b. On the date appearing on the notice of direct deposit.
- c. On the date the employee received the cash payment.
- d. On the date the employee received any other type of payment in lieu of cash.

(emphasis added)

In this case the claimant and the employer dispute whether claimant earned wages in the 1st quarter. Wages for employment during a calendar quarter consist of wages paid during the calendar quarter. Claimant's first paycheck was in April 2, 2021. Claimant testified that she has not been paid the wages that she alleges she performed. Under Iowa Admin. Code r. 871-23.2(2) "wages earned but not paid during the calendar quarter shall be considered as wages for the employment in the quarter paid." Since claimant has not been paid these wages claimant's request to add wages was properly denied.

DECISION:

The September 29, 2021 (reference 03) unemployment insurance decision is affirmed. The claimant's request to add wages from April 1, 2020, through March 31, 2021, was properly denied.



Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

January 6, 2022
Decision Dated and Mailed

cs/mh

NOTE TO CLAIMANT: This decision determines you are not eligible for regular unemployment insurance benefits. 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. Individuals who do not qualify for regular unemployment insurance benefits but who were unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.

ATTENTION: On May 11, 2021, Governor Reynolds announced that Iowa will end its participation in federal pandemic-related unemployment benefit programs effective June 12, 2021. The last payable week for PUA in Iowa is the week ending June 12, 2021. You may be eligible for benefits incurred prior to June 12, 2021. Additional information can be found in the press release at <https://www.iowaworkforcedevelopment.gov/iowa-end-participation-federal-unemployment-benefit-programs-citing-strong-labor-market-and>.