

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RACHEL M HOBKIRK
Claimant

MEYER GARAGE INC
Claimant

APPEAL 22A-UI-05390-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/12/20
Claimant: Appellant (1)

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Code § 96.19(38) – Total and Partial Unemployment
Iowa Code § 96.5(5) – Other Compensation
Iowa Admin. Code r. 871-24.18 – Wage, earnings limitation

STATEMENT OF THE CASE:

Rachel M Hobkirk, the claimant/appellant, filed an appeal from the February 9, 2022, (reference 01) unemployment insurance (UI) decision that concluded she was overpaid REGULAR (state) UI benefits in the gross amount of \$460.00 because she incorrectly reported wages earned with this employer. The parties were properly notified about the hearing. A telephone hearing was held on April 11, 2022. Ms. Hobkirk participated personally. The employer did not participate in the hearing. The administrative law judge took official notice of the administrative record. Department's Exhibit 1 was admitted as evidence.

ISSUES:

Did Ms. Hobkirk correctly report wages earned?
Has Ms. Hobkirk been overpaid REGULAR (state) UI benefits?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Hobkirk began working for the employer on August 2018. She works as a part-time office manager. The employer pays her \$12.50 per hour.

Ms. Hobkirk. filed weekly claims for 12 weeks from April 12, 2020 through July 4, 2020. Ms. Hobkirk reported her net (wages after tax withholding) weekly wages instead of her gross (wages before tax withholding) weekly wage. Ms. Hobkirk reported weekly wages as follows: \$245.00 for the week of April 12 through April 18, \$187.00 for the week of April 19-25, \$154.00 for the week of April 26 through May 2, \$153.00 for the week of May 3-9, \$163.00 for the week of May 10-16, \$152.00 for the week of May 17-23, \$153.00 each week for the weeks of May 24-30, May 31 through June 6, June 7-13, and June 14-20, and \$163.00 each week for the weeks of June 21-27, and June 28 through July 4.

Based on the wages she reported, IWD paid Ms. Hobkirk REGULAR (state) UI benefits in the gross amount of \$46.00 for the week of April 12-18, \$104.00 for the week of April 19-25, \$137.00 for the week of April 26 through May 2, \$138.00 for the week of May 3-9, \$128.00 for the week May 10-16, \$139.00 for the week of May 17-23, \$138.00 each week for the weeks of May 24-30, May 31 through June 6, June 7-13, and June 14-20, and \$128.00 each week for the weeks of June 21-27, and June 28 through July 4.

IWD conducted an audit of Ms. Hobkirk's wages and asked the employer to report Ms. Hobkirk's weekly wages to IWD. The employer reported that it paid Ms. Hobkirk wages in the gross amount of \$375.00 for the week of April 12 through April 18, \$300.00 for the week of April 19-25, and \$187.00 each week for the 10 weeks from April 26 through July 4. Ms. Hobkirk agrees with the employer's reported wages.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.5(5) provides, in pertinent part:

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.

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.

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.

Ms. Hobkirk incorrectly reported her wages for the 12 weeks from April 12, 2020 through July 4, 2020. Based on her correct wages, Ms. Hobkirk was entitled to REGULAR (state) UI benefits in the gross amount of \$0.00 each week for the weeks of April 12-18, and April 19-25, and \$104.00 each week for the 10 weeks from April 26 through July 4, for a total gross amount of \$1,040.00. For those 12 weeks, Ms. Hobkirk received UI benefits in the total gross amount of \$1,500.00

Since Ms. Hobkirk incorrectly reported her wages for 12 weeks and received REGULAR (state) UI benefits in the total gross amount of \$1,500.00 for those weeks, but she was only entitled to \$1,040.00 in benefits for those weeks, she has been overpaid REGULAR (state) benefits in the gross amount of \$460.00 (\$1,500.00 - \$1,040.00).

DECISION:

The February 9, 2022 (reference 01) decision is AFFIRMED. Ms. Hobkirk has been overpaid REGULAR (state) UI benefits in the gross amount of \$460.00, which must be repaid.



Daniel Zeno
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April 14, 2022
Decision Dated and Mailed

dz/kmj