

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MOLLY D STRAWN
Claimant

APPEAL NO. 22A-UI-06293-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 11/17/19
Claimant: Appellant (2R)**

Iowa Code § 96.3(7) - Recovery of Benefit Overpayment
Iowa Code § 96.5(5) – Other Compensation

STATEMENT OF THE CASE:

On March 10, 2022, Molly Strawn (claimant/appellant) appealed the Iowa Workforce Development (“IWD”) decision dated March 7, 2022 (reference 02) that concluded the claimant was overpaid unemployment insurance benefits in the amount of \$866.00 for one week between October 18 and October 24, 2020 due to a failure to report wages earned.

A telephone hearing was held on April 18, 2022, pursuant to due notice. Claimant participated personally. Terry Strawn participated on behalf of employer. Claimant’s Exhibits 1-7 were admitted. The administrative law judge took official notice of the administrative record.

ISSUE:

Was the claimant overpaid unemployment insurance benefits (UI)?

Did the claimant correctly report wages earned?

Is the claimant eligible for benefits based on wages earned?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant filed an original claim for UI with an effective date of November 17, 2019. Weekly claims were then filed from the benefit week ending November 23, 2019 through the benefit week ending April 11, 2020 and again from the benefit week ending October 24, 2020 through the benefit week ending November 14, 2020.

When filing her weekly claims for benefits claimant reported earning wages as follows between October 18, 2020 and January 2, 2021:

WEEK ENDING	WK ST	AB AV	RF OF	ER CT	ACT CT	WAGES	VACAT	HLDY
10/24/20	N	Y	N	0	0	0	0	0
10/31/20	L	Y	N	0	0	600	0	0
11/07/20	S	Y	N	0	0	850	0	0
11/14/20	N	Y	N	0	0	0	0	0
11/21/20	N	Y	N	0	0	0	0	0
11/28/20	L	Y	N	0	0	870	0	0
12/05/20	N	Y	N	0	0	0	0	0
12/12/20	N	Y	N	0	0	0	0	0
12/19/20	N	Y	N	0	0	0	0	0
12/26/20	N	Y	N	0	0	0	0	0
01/02/21	N	Y	N	0	0	0	0	0

Claimant received benefits in those weeks as follows:

BWE-DATE	RPT-CODE	AMT-RP	ISSUE-DT	P	PAY-CODE	AMOUNT
10/24/20	CLEAR	.00	11/12/20	4	PAID-D	481.00
10/31/20	OVER15	600.00	11/12/20	4	PAID-W	.00
11/07/20	OVER15	850.00	11/12/20	4	PAID-W	.00
11/14/20	CLEAR	.00	11/16/20	2	PAID-D	481.00
11/21/20	CLEAR	.00	01/07/21	4	PAID-D	385.00
11/28/20	OVER15	870.00	01/07/21	4	PAID-W	.00
12/05/20	CLEAR	.00	01/07/21	4	PAID-D	385.00
12/12/20	CLEAR	.00	01/07/21	4	PAID-D	385.00
12/19/20	CLEAR	.00	01/07/21	4	PAID-D	385.00
12/26/20	CLEAR	.00	01/07/21	4	PAID-D	385.00
01/02/21	CLEAR	.00	01/07/21	4	PAID-D	385.00

IWD later performed a cross-check of wages reported by claimant and wages actually earned for the week(s) filed. The wages reported by employer were not consistent with what claimant reported. Employer reported wages as follows:

BWE	GROSS WAGES
10/24/20	\$800.00
10/31/20	\$0.00
11/7/20	\$850.00
11/14/20	\$850.00
11/21/20	\$0.00
11/28/20	\$0.00
12/5/20	\$1,100.00
12/12/20	\$0.00
12/19/20	\$0.00
12/26/20	\$0.00
01/02/21	\$0.00

During the hearing claimant and employer reported wages based on pay stubs entered into evidence. These wages are inconsistent with the wages reported by claimant when filing and with employer's response to the cross-check of wages. Those pay stubs showed earnings as follows:

BWE	GROSS WAGES
10/24/20	\$0.00
10/31/20	\$510.00
11/7/20	\$1,190.00
11/14/20	\$0.00
11/21/20	\$0.00
11/28/20	\$1,100.00
12/5/20	\$0.00
12/12/20	\$0.00
12/19/20	\$0.00
12/26/20	\$0.00
01/02/21	\$0.00

The administrative law judge finds the pay stubs are the most reliable evidence of what wages claimant actually earned each week. Based on those records claimant earned no wages from the benefit week ending October 24, 2020 through the benefit week ending January 2, 2021 except for the weeks ending October 31, November 7, and November 28, 2020. Claimant was eligible for benefits in those weeks based on the wages earned. Claimant was not overpaid UI.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated March 7, 2022 (reference 02) that concluded the claimant was overpaid unemployment insurance benefits in the amount of \$866.00 for one week between October 18 and October 24, 2020 due to a failure to report wages earned is REVERSED.

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.

Iowa Code section 96.5(5) provides:

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 contributions 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.

The administrative law judge finds the pay stubs are the most reliable evidence of what wages claimant actually earned each week. Based on those records claimant earned no wages from the benefit week ending October 24, 2020 through the benefit week ending January 2, 2021 except for the weeks ending October 31, November 7, and November 28, 2020. Claimant was eligible for benefits in those weeks based on the wages earned. Claimant was not overpaid UI.

In this case the discrepancy between what claimant reported when filing each week and what was actually earned based on paystubs did not impact her eligibility for benefits. However, claimant is cautioned that she must correctly report wages earned in the week they are earned during each week she files a claim for benefits.

DECISION:

The decision dated March 7, 2022 (reference 02) that concluded the claimant was overpaid unemployment insurance benefits in the amount of \$866.00 for one week between October 18 and October 24, 2020 due to a failure to report wages earned is REVERSED. Claimant earned no wages from the benefit week ending October 24, 2020 through the benefit week ending January 2, 2021 except for the weeks ending October 31, November 7, and November 28, 2020. Claimant was eligible for benefits in those weeks based on the wages earned. Claimant was not overpaid UI.

REMAND:

The issue of whether claimant was totally, partially, or temporarily unemployed and able to work, available for work, and earnestly and actively seeking work during the weeks filed is remanded to the Benefits Bureau for a fact-finding interview and determination.



Andrew B. Duffelmeyer
Administrative Law Judge

April 21, 2022
Decision Dated and Mailed

abd/abd