

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GINA L GETTLER

Claimant

APPEAL 22A-UI-06777-B2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARC S WELGE DDS PC

Employer

OC: 03/22/20

Claimant: Appellant (2)

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Iowa Code § 96.5(5) – Wages

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 10, 2022, (reference 01) unemployment insurance decision that concluded claimant was overpaid \$249.00 in regular unemployment insurance benefits. After proper notice, a telephone hearing was conducted on May 2, 2022. The hearing was held together with Appeals 22A-UI-06781-B2-T. The claimant participated. Official notice of the administrative records was taken.

ISSUES:

Is claimant overpaid benefits?

Is the claimant totally, partially or temporarily unemployed?

Did the claimant correctly report wages earned?

Is the claimant eligible for benefits based on the wages earned?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant established a claim for unemployment insurance benefits with an effective date of March 22, 2020. Claimant's weekly benefit amount (WBA) was \$321.00.

Claimant was employed as an assistant earning \$19.00 per hour.

Claimant filed weekly continued claims for the week ending March 9, 2020. During this period, claimant was partially unemployed.

IWD conducted an audit of the claim, and contacted the employer to verify the claimant's wages earned with employer, Mark S Welge, DDS (See fact-finding documents). A review of the administrative file reflects the claimant did not report the same wages at the employer. Whereas claimant listed her actual wages earned each week, employer's representative took earnings from a two week time period (March 3-16, 2020) and divided those earnings by two to report claimant's weekly earnings. As claimant did not work a full week for the week ending

March 9, and did work a full week for the week ending March 16, 2020, the report of wages was different.

Because the claimant did not report the same wages during this same period as employer, an overpayment of \$249.00 was determined by IWD (See fact-finding documents). Claimant did dispute wages reported by employer.

The agency established the overpayment based upon the following wages and payments made to the claimant: (See fact-finding documents)

WEEK ENDING	WAGES REPORTED	WAGES EARNED	BENEFITS PAID	BENEFITS ENTITLED	OVERPAYMENT
5-9-20	152.00	361.00	249.00	0	249.00
			NET TOTAL		249.00

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.3(3) provides:

3. Partial unemployment. An individual who is partially unemployed in any week as defined in section 96.1A, subsection 37, paragraph "b", and who meets the conditions of eligibility for benefits shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. The benefits shall be rounded to the lower multiple of one dollar.

Iowa Code § 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. *This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38.*

paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3, are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

(emphasis added).

Iowa Code § 96.19(38)b provides:

As used in this chapter, unless the context clearly requires otherwise:

38. "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. 871-24.18 provides:

Wage-earnings limitation. An individual who is partially unemployed may earn weekly a sum equal to the individual's weekly benefit amount plus \$15 before being disqualified for excessive earnings. If such individual earns less than the individual's weekly benefit amount plus \$15, the formula for wage deductions shall be a sum equal to the individual's weekly benefit amount less that part of wages, payable to the individual with respect to that week and rounded to the lower multiple of one dollar, in excess of one-fourth of the individual's weekly benefit amount.

Iowa Admin. Code r. 871-23.3(1) provides:

(1) "Wages" means all remuneration for personal services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. Wages also means wages in lieu of notice, separation allowance, severance pay, or dismissal pay. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rule 23.2(96).

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.

The credible evidence in this case is that claimant received \$249.00 in regular unemployment insurance benefits based upon wages initially reported. However, evidence was presented that the wages reported by the employer to IWD were inaccurate or incorrect. The employer took two weeks worth of wages and divided the total by two. Claimant correctly reported wages earned each week, while employer incorrectly reported wages by not differentiating the wages earned in the various weeks.

Based upon the wages earned, claimant is eligible for benefits because she correctly reported wages earned. As a result, the claimant was not overpaid benefits in the amount of \$249.00. The administrative law judge concludes therefore, that the overpayment was incorrectly calculated and the claimant was not overpaid benefits.

DECISION:

The March 10, 2022 (reference 01) is reversed. The claimant was not overpaid \$249.00 in regular unemployment insurance benefits.



Blair A. Bennett
Administrative Law Judge

May 13, 2022
Decision Dated and Mailed

bab/kmj