

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMES OCHAYA
Claimant

CRESLINE PLASTIC PIPE CO
Employer

APPEAL 22A-UI-04740-AW-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/01/19
Claimant: Appellant (2)

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Code § 96.1A(37) – Definitions – Total, partial unemployment
Iowa Code § 96.5(5) – Payment – Severance pay, disability, pension
Iowa Admin. Code r. 871-24.13(4)(o) – Payment – Nondeductible, relinquish right

STATEMENT OF THE CASE:

Claimant filed an appeal from the February 14, 2022 (reference 06) unemployment insurance decision that found claimant was overpaid unemployment insurance (UI) benefits in the amount of \$506.00 for the week ending June 13, 2020, because he did not report wages earned from Cresline Plastic Pipe. The parties were properly notified of the hearing. A telephone hearing was held on March 29, 2022. Claimant participated with his attorney, Marlon Mormann. Employer did not participate. Claimant's Exhibit A was admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant was overpaid benefits.
Whether claimant was totally, partially or temporarily unemployed.
Whether claimant correctly reported wages earned.
Whether claimant is 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 was employed with Cresline Plastic Pipe until November 2019. On June 1, 2020, claimant and employer reached a settlement agreement wherein claimant relinquished certain legal rights and claims in exchange for monetary compensation. (Exhibit A)

Claimant filed an initial claim for unemployment insurance benefits effective December 1, 2019 and an ongoing weekly claim for the benefit week ending June 13, 2020. Claimant reported no earnings on his June 13, 2020 weekly claim and received a full UI benefit payment in the amount of \$506.00.

REASONING AND CONCLUSIONS OF LAW:

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

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 96.1A(37) provides:

Totally unemployed", "partially unemployed", and "temporarily unemployed.

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 Code section 96.5(5) provides:

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 Admin. Code r. 871-24.13(4)o provides:

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

o. Payments conditional upon the release of any rights.

For the week ending June 13, 2020, claimant performed no work and earned no wages. Claimant was totally unemployed.

Around that time, claimant received a payment from employer in exchange for giving up a legal right or claim. That payment is not deductible from claimant's benefits.

Claimant correctly reported no wages earned on his weekly claim. Accordingly, claimant is not overpaid benefits for the week ending June 13, 2020.

DECISION:

The February 14, 2022 (reference 06) unemployment insurance decision is reversed. Claimant was totally unemployed and earned no wages to report on his weekly claim. Claimant is not overpaid benefits for the week ending June 13, 2020.



Adrienne C. Williamson
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April 6, 2022
Decision Dated and Mailed

acw/jh