

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STACEY GUTIERREZ

Claimant

US FOODS

Employer

APPEAL 22A-UI-06387-B2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

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

Fed Law PL 116-136, Sec. 2104 – Overpayment of FPUC

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 28, 2022, (reference 03) unemployment insurance decision that concluded claimant was overpaid \$600.00 in FPUC benefits. After proper notice, a telephone hearing was conducted on May 9, 2022. The hearing was held together with Appeals 22A-UI-06385-B2-T. The claimant participated. Official notice of the administrative records was taken.

ISSUES:

Is claimant overpaid FPUC unemployment insurance 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 \$322.00. For those weeks claimant received regular state benefits, claimant was also entitled to receive supplemental benefits in the amount 600.00.

Claimant was found not to have been overpaid regular state benefits in 22A-UI-06385-B2-T. The overpayment in this matter came as a result of a fact-finder's finding in 22A-UI-06385-B2-T, which has now been reversed.

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.

PL116-136, Sec. 2104 provides, in pertinent part:

(b) Provisions of Agreement

(1) Federal pandemic unemployment compensation.--Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to

(A) the amount determined under the State law (before the application of this paragraph), plus

(B) an additional amount of \$600 (in this section referred to as "Federal Pandemic Unemployment Compensation").

....

(f) Fraud and Overpayments

(2) Repayment.--In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled,

the State shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation to the State agency except that the State agency may waive such repayment if it determines that

(A) the payment of such FPUC was without fault on the part of any such individual; and

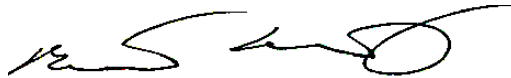
(B) such repayment would be contrary to equity and good conscience.

Claimant gave credible testimony that she was entitled to all regular state benefits received. She was found eligible for those benefits in 22A-UI-06385-B2-T.

Based upon the wages earned, claimant was eligible for FPUC benefits. The administrative law judge concludes therefore, that the FPUC overpayment was incorrectly calculated.

DECISION:

The February 28, 2022 (reference 03) is reversed. The claimant was not overpaid \$600.00 in FPUC benefits.



Blair A. Bennett
Administrative Law Judge

May 26, 2022
Decision Dated and Mailed

bab/scn