

BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

WILLIAM S GRAY

Claimant

HEARING NUMBER: 20BUI-00030

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A REHEARING REQUEST shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.4-4

DECISION

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

In entering these findings we take official notice of the contents of Mr. Gray's previous case before us. The facts in that case were agreed to by all involved, and the only issues there were legal ones. We thus rely on that record here as it saves the parties any further unnecessary delay.

Since 2014, the Claimant has held a part-time position with the City of Des Moines as an elected city council member. He has continued to serve in the position since December 2, 2018, and his hours and wages have not changed since he established his claim for benefits. His hours vary based upon community needs and meetings, but he works on average 20 hours per week. His weekly benefit amount in the prior claim year was \$485.00. This was the applicable weekly maximum at that time. He earns \$500.00 each week as a city council member, regardless of hours.

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In his previous benefit year, the Claimant received advice from Iowa Workforce that he need not report his earnings as an elected council member. He accordingly did not do so. He then filed for 17 weeks of benefits and was paid out each week. He only stopped claiming when it was determined that the earnings with the City were wages, even though they were not *insured* wages. This meant that contrary to the advice he *should have* reported the \$500 a week. Since \$500 is exactly \$15 more than the previous WBA of \$485 the Claimant was overpaid for every last week he collected benefits. He owes an overpayment for the entire amount he collected. Had the Claimant waited to file in July of 2019 his WBA would have increased to \$500 (since the maximum is recalculated each June). He would then have been eligible to collect partial benefits. As a result of the poor advice, the Claimant has been overpaid for the entire amount of all benefits he collected in his prior benefit year.

The agency records in this case reveal that in the prior benefit year the Claimant had the following in *covered wages*:

	3rd Quarter 2017	4th Quarter 2017	1st Quarter 2018	2nd Quarter 2018
Convergeone	\$30,662	\$30,662	\$31,162	\$22,998

Total Wages: \$115,484.00

Credits (=1/3 wages) : \$38,494.67

The high quarter earnings are \$31,162.00 and the Claimant reports a single dependent. With one dependent we take a 22nd to get a weekly benefit amount of \$1,416.45. The applicable statewide maximum for the prior claim, for a single dependent, was \$485. Twenty-six times this amount is \$12,610.00, and this less than the credits of \$38,494.67. The Claimant's maximum benefit amount was thus calculated to \$12,610.00. He was paid out 17 weeks of benefits for a total of \$8,245 but was subsequently overpaid the entire \$8, 245.00.

Had the Claimant filed in July of 2019 instead of December of 2018 his base period wages would have been:

	2nd Quarter 2018	3rd Quarter 2018	4th Quarter 2018	1st Quarter 2019
Convergeone	\$22,998	23,722	15,044	

Total Wages: \$61,764.00

Credits (=1/3 wages) : \$20,588.00

The high quarter earnings are \$23,722.00 and we assume the Claimant reports that same single dependent. With one dependent we take a 22nd to get a weekly benefit amount of \$1,078.27. At the end of the 2019 fiscal year the statewide average weekly wage increased from 45,877.31 to 47,290.57. The applicable statewide maximum for a July 2019 claim, with a single dependent, then became \$500. Twenty-six times this amount is \$13,000, and this is *still* less than the credits of \$20,588. The Claimant's maximum benefit amount would then be \$13,000.00. Assuming he

remained unemployed other than in his City of Des Moines position, the Claimant would be eligible for a partial payout each week of \$125. If he remained partially unemployed for the ensuing 52 weeks, he would have been able to collect at most \$6,125. This is still \$2,120.00 less than he was actually paid.

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The Claimant did file in December of 2019. His base period wages are:

	3rd Quarter 2018	4th Quarter 2018	1st Quarter 2019	2 nd Quarter of 2019
Convergeone	23,722	15,044		

Total Wages: \$38,766.00

Credits (=1/3 wages) : \$12,922.00

The high quarter earnings are still \$23,722.00 and the Claimant reports that same single dependent. With one dependent we take a 22nd to still get a weekly benefit amount of \$1,078.27. The same statewide maximum of \$500 applies. Twenty-six times this amount is \$13,000, and this is *slightly more* than the credits of \$12,922. The Claimant's maximum benefit amount would then be \$12,922. Assuming he remained unemployed other than in his City of Des Moines position, the Claimant would still be eligible for a partial payout each week of \$125. If he remained partially unemployed for the ensuing 52 weeks, he'd be able to collect at most \$6,125. Again, this is still \$2,120.00 less than he was actually paid. The eight-dollar reduction in the maximum benefit amount as compared to July, 2019 would not come into play so long as the Claimant continued to collect the money from his position at the City of Des Moines.

REASONING AND CONCLUSIONS OF LAW:

Official Notice: Iowa Code section 17A.14 provides:

Rules of evidence -- official notice.

In contested cases: ...

4. Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the agency. Parties shall be notified at the earliest practicable time, either before or during the hearing, or by reference in preliminary reports, preliminary decisions or otherwise, of the facts proposed to be noticed and their source, including any staff memoranda or data, and the parties shall be afforded an opportunity to contest such facts before the decision is announced unless the agency determines as part of the record or decision that fairness to the parties does not require an opportunity to contest such facts.

Under the rules of court the matters of which judicial notice may be taken are:

Rule 5.201 Judicial notice of adjudicative facts.

a. Scope of rule. This rule governs only judicial notice of adjudicative facts.

b. Kinds of facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy

cannot reasonably be questioned.

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Iowa Rule of Evidence 5.201. Here the facts of the previous case (19A-UI-02887) which we have taken notice of are not contested by anyone, and fairness to the parties does not require an opportunity to contest such facts.

Second Benefit Year Requalification: In order to draw benefits in a second benefit year a claimant must: (1) be paid adequate wages in insured work during the base period of the second benefit year and (2) must during or subsequent to the first benefit year, work in and be paid wages for insured work totaling at least eight times the first year's WBA.

Iowa Code §96.4(4)(c) provides:

c. If the individual has drawn benefits in any benefit year, the individual must during or subsequent to that year, work in and be paid wages for insured work totaling at least eight times the individual's weekly benefit amount, as a condition to receive benefits in the next benefit year.

The purpose of the second year requalification is two-fold. First, it assures additional tax revenue is collected to support payment of the second benefit year. Second, and more importantly, it assures one benefit year of benefits is paid out per separation. In the unique circumstances of this case neither is satisfied.

As noted, had the Claimant filed his claim for benefits in July, 2019, he would have been able to collect \$125 a week so long as he remained employed only at the City, assuming he was otherwise eligible. He could have collected, at the most, \$6,125. As it is, he has filed in December, 2019 and the math works out that so long as he remains employed only by the City, he still can collect, at the most \$6,125. But he was paid out \$8, 245.00. He will remain overpaid the difference between any amounts he claims for and the amount he did collect. The revenues chargeable are in two quarters not charged in the first benefit year, and any excess benefits will be recovered. Any actuarial concerns are satisfied.

The policy of one benefit year per separation is also satisfied. The Claimant was totally overpaid for all benefits collected in the first benefit year based on the Convergeone credits. Thus, to date, we have zero benefits charged to Convergeone for that separation. If the overpayment is offset by partial benefits allowed in the current year, Convergeone will only end up being charged for *exactly the same amount of benefits at most* that it would have been charged had the Claimant received competent agency advice and filed in July, 2019. As far as charges to Convergeone are concerned, there's still only one (partial) benefit year for that one separation.

In interpreting the disqualification provisions, it is essential to keep in mind that when a statute has a beneficial and remedial purpose it is to be construed liberally so as to meet most effectively the beneficial end in view and prevent a failure of the remedy intended. *E.g. The Kentucky*, 1 G. Greene 398 (Iowa 1848). A statute that creates regulations conducive to the public good is remedial in nature and should be liberally construed. *Johnson County v. Guernsey Association of Johnson County*, 232 N.W.2d 84 (Iowa 1975). Specifically, since the "purpose of our unemployment compensation law is to protect from financial hardship workers who become unemployed through no fault of their own" the courts "are to construe the provisions of that law liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Employment Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997).

As a corollary, the courts “are to interpret strictly the law's disqualification provisions, again with a view to further the purpose of the law”. *Id.* In construing the act the Court “must keep in mind the beneficial purposes of the Act, [the p]recedent that the employer has the burden of proof regarding misconduct, and [the p]recedent that the

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disqualification provisions of the Act are to be strictly construed against the employer.” *Irving v. EAB*, 883 N.W.2d 179, 193 (Iowa 2016)). Given these directives, the wording of the statute, and the policy underlying the law we find that in the unique circumstances of this case the overpaid Claimant did not draw benefits in the previous benefit years within the meaning of Code §96.4(4)(c). Naturally, for set-off purposes his debt is not erase by this ruling. We only rule that he is not rendered ineligible by the eight times requirement. We would expect that any benefits he has credited to him this benefit year will go to offset his overpayment. In other words, he will end up being credited for the benefits he would have received had he received competent agency advice, but no more benefits than that. We view this as consistent with the statute.

DECISION:

The administrative law judge’s decision dated January 29, 2020 is **REVERSED**. The Employment Appeal Board concludes that the Claimant did not draw benefits in the previous benefit years within the meaning of Code §96.4(4)(c). Accordingly, he is allowed benefits **if he is otherwise eligible. This means the Claimant must continue to earnestly and actively search for suitable work.**

We further note that if the Claimant is offered suitable work that pays at least 65% of his high quarter average wage (in other words pays at least \$1, 186.1 a week) then **he will be disqualified if he refuses that work without good cause.**

We are aware that the Claimant has appealed his previous denial to District Court. Should the District Court reverse the overpayment in the 2018 benefit year, this would mean that the Claimant **did** collect his benefit in the prior benefit year, and this *would* mean the Claimant is not eligible in the current year unless he earns 8-times his weekly benefit amount in insured wages. The Claimant concedes his wages with the City, his only 2019 wages, are **not** insured wages and do not count for the 8-times requirement. This means if the Claimant prevails in District Court, he will be overpaid for any benefits collected in the current year based on his having collected benefits in the 2018 benefit year without satisfying the 8-times requalification. We will so provide in any procedendo from a District Court reversal.

Finally, we caution the Claimant that **he must report his City of Des Moines earnings when filing his weekly claim.**

Ashley R. Koopmans

James M. Strohman
