

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

HANNAH J ROZELL
Claimant

HOSMER TOYOTA
Employer

APPEAL 22A-UI-06663-B2-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 03/22/20
Claimant: Appellant (4R)

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Code § 96.5(5) – Wages
Iowa Code § 96.1A(37) – Total and Partial Unemployment

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 10, 2022, (reference 02) unemployment insurance decision that concluded claimant was overpaid \$126.00 in regular unemployment insurance benefits. After proper notice, a telephone hearing was conducted on April 29, 2022. The hearing was held together with Appeals 22A-UI-06665-B2-T. The claimant participated. Official notice of the administrative records was taken. Claimant's Exhibits A-B were admitted.

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 \$147.00.

Claimant began employment for this employer on October, 2018. Claimant was employed as a part time office assistant and cleaning person earning \$10.50 per hour plus \$50.00 / week to clean the facility.

Claimant filed weekly continuing claims for the period of July 18, 2020 and July 25, 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. A review of the administrative file reflects the claimant did not report the same wages as the employer.

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.

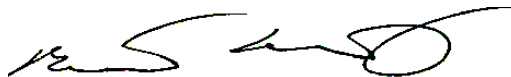
The credible evidence in this case is that claimant received \$63.00 per week in regular unemployment insurance benefits based upon wages initially reported. However, following an audit by IWD, it was determined that claimant actually earned more wages than initially reported. Although claimant earned more wages than initially reported, claimant's wages were not equal to her weekly benefit amount (\$147.00) plus \$15.00. This amount would equal \$162.00. Claimant did not receive \$162.00 for either of the weeks in question. Thereby claimant is still eligible for state unemployment benefits of some amount to be determined.

The claimant was overpaid benefits in some amount, although not in an amount equal to \$126.00. The administrative law judge finds the overpayment amount to be incorrectly calculated and remands the matter to the benefits bureau to recalculate the amount of overpayment given that claimant earned \$151.80 for each of the two weeks in question.

DECISION:

The March 10, 2022 (reference 02) is modified in favor of the claimant. The claimant was overpaid an amount yet to be determined in regular unemployment insurance benefits, which must be repaid.

The administrative law judge finds the overpayment amount to be incorrectly calculated and remands the matter to the benefits bureau to recalculate the amount of overpayment given that claimant earned \$151.80 for each of the two weeks in question.



Blair A. Bennett
Administrative Law Judge

May 12, 2022
Decision Dated and Mailed

bab/scn