

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LUKE J CRAWFORD
Claimant

CEDAR RIDGE VINEYARDS LLC
Employer

APPEAL 22A-UI-07533-SN-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (2)

Iowa Code § 96.3(7) – Overpayment of Benefits
Iowa Code § 96.5(5) – Deductions
Iowa Code section 96.1A(37) – Total, Partial, Temporary Unemployment

STATEMENT OF THE CASE:

The claimant, Luke J Crawford, filed a timely appeal from the February 14, 2021, (reference 02) unemployment insurance decision that found he had been overpaid \$186.00 for the two weeks between June 28, 2020 and August 1, 2020 due to his failure to report wages earned during that week. After due notice was issued, a telephone conference hearing was set for May 10, 2022. The claimant participated. The employer did not participate. Official notice was taken of the agency records. Exhibit A, B, C, and D were received into the record.

ISSUES:

Whether the claimant failed to accurately report his wages between the week ending June 28, 2020 and the week ending August 1, 2020?

Whether the claimant has been overpaid benefits?

FINDINGS OF FACT:

Having heard the testimony and having examined the evidence in the record, the administrative law judge finds:

The claimant filed for unemployment insurance benefits effective March 29, 2020. The following is a table describing employer's responses to a wage audit and the representative's correction to the claimant's wages:

	Employer Report	Claimant Report	Benefits Paid	Benefits Entitled
07/04/20	\$75.00	\$00.00	\$147.00	\$108.00
07/11/20	\$87.00	\$87.00	\$96.00	\$96.00
07/18/20	\$00.00	\$00.00	\$147.00	\$147.00
07/25/20	\$00.00	\$00.00	\$147.00	\$147.00
08/01/20	\$220.00	\$00.00	\$147.00	\$00.00

Investigator Sean Clark issued the decision reasoning that the claimant had been overpaid by \$39.00 the week ending July 4, 2020, and \$147.00 the week ending August 1, 2020.

The claimant believes he earned the \$75.00 referenced in the employer's response to the audit on June 26, 2020. As part of his job, the claimant makes a daily log of the miles he has driven. The claimant provided a copy of this log that shows he drove on June 26, 2020. (Exhibit B) The administrative records KCCO and DBIN reflect the claimant reported earning \$75.00 for the week ending June 27, 2020. The claimant also provided a statement of earnings showing the pay period between June 17, 2020, and June 30, 2020. This document shows he worked for 6.25 hours and earned \$75.00 during that pay period. He also provided the earnings statement for the pay period between July 1, 2020, and July 14, 2020. This document shows he worked for 6.25 hours and earned \$87.00 during that pay period. (Exhibit D)

The only day the claimant worked in July was July 7, 2020. The claimant worked for 7.25 hours that week which is reflected on his earnings reports for the week ending July 11, 2020.

The next days the claimant worked were on August 5, 2020, and August 11, 2020. The claimant provided a copy of this log that shows he drove on August 5, 2020, and August 11, 2020. (Exhibit B) The claimant provided a statement of earnings for the period between July 29, 2020, and August 11, 2020. It shows the claimant earned \$448.68 gross during that period.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant accurately reported his wages. He further concludes there is not an overpayment.

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 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.

The findings of facts reflect the employer erroneously reported the claimant's earnings for the week ending June 27, 2020 as his earnings for July 4, 2020. The claimant did not earn any wages for the week ending July 4, 2020. As a result, he was due his full weekly benefit amount of \$147.00

It further shows the claimant accurately reported zero in earnings for the week ending August 1, 2020. The claimant did not earn any wages for the week ending August 1, 2020. As a result, he was due his full weekly benefit amount of \$147.00

Iowa Code section 96.3(7)a-b, as amended in 2008, provides:

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. The employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. This prohibition against relief of charges shall apply to both contributory and reimbursable employers.

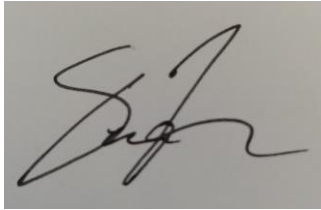
(b) However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal **regarding the issue of the individual's separation from employment.**

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Since the claimant was entitled to the benefits he received for the weeks ending July 4, 2020 and August 1, 2020, the claimant has not been overpaid regular unemployment benefits.

DECISION:

The February 14, 2021, (reference 03) unemployment insurance decision is reversed. The claimant has not been overpaid regular unemployment insurance benefits.



Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

June 30, 2022
Decision Dated and Mailed

smn/mh

Note to Claimant: Overpayment waivers of federal benefits are available. A claimant can apply for a waiver regarding federal benefits received to <https://www.iowaworkforcedevelopment.gov/application-overpayment-waiver>.