

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

UNITY D ANDERSON
Claimant

HL CORPORATION
Employer

APPEAL 22A-UI-06956-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
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

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 10, 2022, (reference 01) unemployment insurance decision that concluded claimant was overpaid \$123.00 in regular unemployment insurance benefits. After proper notice, a telephone hearing was conducted on April 28, 2022. The claimant participated. The employer participated through Ann Hinton. Official notice of the administrative records was taken.

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 15, 2020. Claimant's weekly benefit amount (WBA) was \$148.00.

Claimant began employment for this employer in 2019 and worked as a part-time server earning \$4.35 per hour plus tips.

Claimant filed a weekly continued claim for the week ending April 4, 2020. Claimant did not report any wages earned. Claimant did not perform work during the week because the restaurant had closed in response to the COVID-19 pandemic.

IWD conducted an audit of the claim, and contacted the employer to verify the claimant's wages earned with employer, HL Corporation (See fact-finding documents). A review of the administrative file reflects that the claimant did not report the same wages at the employer. Employer reported claimant worked 11.52 hours, earned \$105.12 and earned \$55.02 in tips, for a total of \$160.00. The audit was completed by the employer's bookkeeper, who did not

participate in the hearing. Employer doesn't know how the employer reported wages were calculated before being reported to IWD since it was physically impossible for claimant to earn tips while the restaurant was closed.

The agency established the overpayment based upon the following wages and payments made to the claimant: (See fact-finding documents)

| WEEK ENDING | WAGES REPORTED | WAGES EARNED | BENEFITS PAID | BENEFITS ENTITLED | OVERPAYMENT |
|----------------|-------------------|-----------------|------------------|----------------------|-------------|
| 04-04-20 | \$0 | \$160 | \$148 | \$25 | \$123 |
| | | | NET TOTAL | | \$123 |

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge reverses the initial decision.

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 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 \$148.00 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, and IWD concluded claimant was overpaid \$123.00 based on employer's report of earnings.

Both employer and claimant testified under oath that claimant did not perform work for the week ending April 4, 2020, and could not have earned \$55.02 in tips (because the restaurant was closed that week) as reported by employer's bookkeeper. The employer's erroneous reporting of wages led to an overpayment being established in error.

Therefore, based upon the undisputed evidence, the administrative law judge concludes the claimant was totally unemployed, and therefore entitled to the \$148.00 payment of regular unemployment insurance benefits. She is not overpaid any benefits.

DECISION:

The March 10, 2022, (reference 01) is reversed. The claimant is not overpaid \$123.00 in regular unemployment insurance benefits.



Jennifer L. Beckman
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May 17, 2022

Decision Dated and Mailed

jlb/acc