

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SYLESTA A. MARTENS

Claimant

APPEAL 22A-UI-06003-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MID PRAIRIE COMMUNITY SCHOOL DIST

Employer

OC: 03/29/20

Claimant: Appellant (4)

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Code § 96.1A(37)a & b – Total and Partial Unemployment
Iowa Code § 96.5(5)- Compensation
Iowa Code § 96.7(2)a – Same Base Period Employment

STATEMENT OF THE CASE:

On March 8, 2022, the claimant/appellant filed an appeal from the March 2, 2022, (reference 01) unemployment insurance decision that concluded the claimant was overpaid unemployment insurance benefits in the amount of \$1,009.00 as a result of a disqualification decision. The parties were properly notified of the hearing. A telephone hearing was held on April 19, 2022. The hearing was held together with appeal 22A-UI-06004-CS-T and combined into one record. The claimant participated. The employer participated through Business Manager, Jeff Swartzentruber. Administrative notice was taken of the claimant's unemployment insurance benefits records. Exhibits A, B, and D-1 were admitted into the record.

ISSUES:

- I. Is claimant totally, partially or temporarily unemployed?
- II. Did the claimant correctly report wages earned?
- III. Was the claimant was overpaid benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant filed an initial claim for unemployment insurance benefits effective March 29, 2020. Claimant stopped filing for benefits and then filed an additional claim for benefits on January 17, 2021. Claimant's weekly benefit amount was \$403.00. Claimant began employment with Mid Prairie Community School District on March 1, 2021. Claimant works Monday through Friday for 6.5 hours each day. (Exhibit B). Claimant earns \$13.60 per hour.

The employer has a contract with claimant that she works 184 days a year. The employer then takes the wages earned during the 184 days the claimant works and divides them over 12 months (or less if the contract is pro-rated to a different time period). (Exhibit B). This ensures that

employees are paid during the months school is not in session instead of only the months they actually perform work for employer. Although claimant is paid monthly she actually earns the income each week.

Claimant began work for employer on March 1, 2021. Claimant earned \$442.00 in wages for the week ending March 6, 2021. (Exhibit D-1, pg. 1). Claimant worked her normal work scheduled. Claimant asked the employer what she should report as her wages earned for the week since she was on a contract that paid the wages over the length of the year instead of the week she earned them. The employer directed her to report \$207.40 each week. (Exhibit A). Claimant reported \$281.00 in earned income for the week ending March 6, 2021. (Exhibit D-1, pg. 2). This income included wages from the employer and wages she earned with her part-time employer, Dolgencorp LLC. Claimant received \$222.00 in unemployment insurance benefits for this week.

For the week ending March 13, 2021, the employer reported claimant earned \$469.20. Claimant acknowledges that she worked her normal hours for the week. Claimant reported wages earned of \$275.00. (Exhibit D-1, pg. 2). This included wages with employer and Dolgencorp LLC. Claimant received \$228.00 in state unemployment benefits for this week.

For the week ending March 20, 2021, claimant reported she earned \$236.00 in wages. (Exhibit D-1, pg. 2). The employer reported claimant earned \$442.00 in wages in their response to Iowa Workforce Development's Request of Wage Records. (Exhibit D-1, pg. 1). Claimant and employer both agree claimant did not work during this week because of the school being on Spring Break. Claimant had no wages with employer for the week ending March 20, 2021. Claimant received \$267.00 in state unemployment benefits for this week.

For the week ending March 27, 2021, claimant reported she earned \$211.00. . (Exhibit D-1, pg. 2). The employer reported claimant earned \$442.00. (Exhibit D-1, pg. 1). The claimant worked her normal work schedule the week ending March 27, 2021. Claimant received \$292.00 in state unemployment insurance benefits for this week.

Claimant had non-educational wages in her base period as set forth below:

EMPLOYER	ACCT-LOC	2018/4	2019/1	2019/2	2019/3
TALBOTS INC	224788-000	\$8,804.00	\$8,820.00	\$8,839.00	\$9,277.00

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes:

Iowa Code § 96.1A(37) provides:

"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(3) provides:

3. Partial unemployment. An individual who is partially unemployed in any week as defined in section 96.1A, subsection 38, 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 section 96.4(5)c provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

5. Benefits based on service in employment in a nonprofit organization or government entity, defined in section 96.1A, subsection 18, are payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the same basis of other service subject to this chapter, except that:

c. With respect to services for an educational institution in any capacity under paragraph "a" or "b", benefits shall not be paid to an individual for any week of unemployment which begins during an established and customary vacation period or holiday recess if the individual performs the services in the period immediately before such vacation period or holiday recess, and the individual has reasonable assurance that the individual will perform the services in the period immediately following such vacation period or holiday recess.

Iowa Code § 96.7(2)a(2)(a),(b), and (c) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received

during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and § 96.8, subsection 5.

- (b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding § 96.8, subsection 5.

The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under § 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under § 85.33, § 85.34, subsection 1, or § 85A.17, or responsible for paying indemnity insurance benefits.

Iowa Code section 96.3.(7) states:

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.

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 deduction 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.

Claimant testified she worked her regular hours with employer for the weeks ending March 6, 2021; March 13, 2021; and March 27, 2021. Claimant argues that only the amount she was paid should be considered for her wages. However, the statute looks at the amount the claimant earns the particular week. In this case, claimant earned between \$442.00-\$469.20 each of these weeks with the employer. As a result, claimant's weekly income earned exceeds her weekly benefit amount (\$403.00 per week) plus \$25.00. The administrative law judge finds the claimant was not partially unemployed for these weeks and she is not entitled to benefits for these weeks. Claimant received a total of \$742.00 in unemployment benefits for the weeks ending March 6, 2021; March 13, 2021; and March 27, 2021.

Between March 14, 2021, through March 20, 2021, the school was on Spring break. Claimant did not perform work for the employer during this time period. Typically claimant is not eligible for benefits during this time period because the period of unemployment occurred during the

employer's customary vacation period. However, claimant had other non-educational wages in her base period and she is eligible for benefits for this one-week period. The employer's account shall not be charged for this week.

For the week ending March 20, 2021, claimant mistakenly reported that she earned \$207.40 from the employer. In actuality claimant earned only \$28.60 in income from her part-time employer. Claimant's weekly earning for week ending March 20, 2021, does not exceed the formula that would reduce her weekly benefit amount. As a result, claimant is entitled to the full weekly benefit amount of \$403.00 for the week ending March 20, 2021. Claimant receive \$267.00 in state unemployment insurance benefits for the week ending March 20, 2021. Claimant has been underpaid \$136.00 for the week ending March 20, 2021.

The administrative law judge concludes claimant was not entitled to \$742.00 in state unemployment benefits for the weeks ending March 6, 2021; March 13, 2021; and March 27, 2021. Claimant was underpaid \$136.00 in state unemployment benefits for the week ending March 20, 2021. Taking into consideration her underpayment of state unemployment benefits, claimant has been overpaid \$606.00 in state unemployment benefits. Claimant is required to repay these benefits.

DECISION:

The March 2, 2022 (reference 01) unemployment insurance decision is MODIFIED in favor of APPELLANT. Claimant was not totally, partially or temporarily unemployed for the weeks ending March 6, 2021; March 13, 2021; and March 27, 2021. Claimant received \$742.00 in benefits that she was not entitled to receive for these weeks.

Claimant had other non-educational wages in her base period. Claimant was temporarily and totally unemployed for the week ending March 20, 2021. Claimant is entitled to the full weekly benefit amount of \$403.00. Claimant received \$267.00 for this week. Claimant was underpaid \$137.00 for the week ending March 20, 2021. The employer's account shall not be charged for this one week period.

Claimant is required to repay \$606.00 in state unemployment benefits.



Carly Smith
Administrative Law Judge

April 21, 2022
Decision Dated and Mailed

cs/scn