

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JOSE R MELENDEZ
Claimant

APPEAL 17R-UI-10519-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 04/23/17
Claimant: Appellant (1)**

Iowa Code § 96.4(3) - Able and Available
Iowa Admin. Code r. 871-24.2(1)e – Notice to Report
Iowa Admin. Code r. 871-24.23(11) – Failure to Report
Iowa Admin Code chapter 25- Benefit payment control

STATEMENT OF THE CASE:

The claimant, Jose R. Melendez, filed an appeal from the unemployment insurance decision dated July 17, 2017, (reference 03) that concluded he was ineligible for benefits because he failed to report when directed by an IWD representative. A first hearing was scheduled between the parties on September 7, 2017. Mr. Melendez failed to appear at the hearing, and the appeal was dismissed. Upon a remand decision dated October 13, 2017, from the Employment Appeal Board, Mr. Melendez's request to reopen the hearing was granted.

Notice of the second hearing was provided to the parties. A telephone hearing was held on November 20, 2017. The claimant participated personally and through a Spanish interpreter with CTS Language Link. Michelle Saddoris, Job Insurance Quality Auditor II, also participated. Department Exhibits A through D were received into evidence. The administrative law judge took official notice of the claimant's unemployment insurance benefits records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant fail to report as directed, or offer a good cause reason for failure to do so?
Did the claimant properly report all wages earned for the period of April 23, 2017 through July 8, 2017.

FINDINGS OF FACT:

Having heard the testimony and having examined the evidence in the record, the administrative law judge finds: The claimant filed a new claim for unemployment insurance benefits with an effective date of April 23, 2017. The claimant filed his claim in response to reduced hours at Tyson Fresh Meats Inc. The claimant filed for and received a total of \$881.00 in unemployment insurance benefits for the weeks between April 23, 2017 and July 8, 2017.

The claimant was informed of the unemployment insurance rules, when he established his claim for unemployment insurance benefits and upon receipt of the claimant handbook (Department Exhibit C-1). The Unemployment Insurance Handbook includes instructions for properly filing claims and informs claimants that failure to follow the instructions in the handbook may lead to an improper payment of benefits that must be paid back (Department Exhibit C-2E). The claimant handbook stated specifically (in both English and Spanish) that the claimant was responsible for understanding the contents of the handbook, and if he did not, he must contact Iowa Workforce Development (IWD) (Department Exhibit A-2).

With respect to "Reporting Earnings," the handbook states:

Gross earnings/wages (before tax and payroll deductions) must be reported on the weekly claim during the week the wages are earned, not when the wages are paid. Earnings must be reported even if the payment has not been received yet. To calculate the amount to report, the individual should multiply the number of hours worked by the hourly wage. Individuals should report the full gross amount of earnings and IWD will calculate any deductions. If an individual earns \$15.00 over their WBA, they will not receive a benefit payment (Department exhibit C-2D).

In the claimant handbook, applicants are also informed that they may be requested to participate in a quality control audit, and failure to cooperate can result in denial of benefits (Department Exhibit C2-F). Based upon the US Department of Labor guidelines, claims are selected at random for audits, and the claimant was first notified that his claim would be audited on May 23, 2017 when he received a notice to report in a scheduled interview. The claimant responded to the notice and participated in the first fact-finding interview with Matt Gifford, Quality Control Auditor (Department Exhibit A-1 and A-3).

As a result of information provided at the fact-finding interview, an additional investigation was performed. The employer, Tyson Fresh Meats Inc., responded to the audit of wages, providing a weekly report of wages earned (Department Exhibit B-1) which were compared to the claimant's reported wages with his weekly continued claims (Department Exhibit B-2 and C-4). The claimant stated he calculated his wages by looking at his hours worked online and multiplied it by his rate of pay.

A second notice was mailed to the claimant's last known address on July 10, 2017 that informed him there was a telephone interview scheduled for 8:30 a.m. on July 14, 2017 to discuss whether he had properly reported his earnings and was overpaid benefits (Department Exhibit A-4). The notice also stated that failure to participate in the interview could result in being disqualified from receiving unemployment insurance benefits (Department Exhibit A-4). The claimant acknowledged he received the notice prior to the interview but did not pick up the phone call when Ms. Saddoris attempted to contact him on July 14, 2017. He provided no other explanation for his failure to accept the call. With the assistance of an interpreter, Ms. Saddoris left a voicemail for the claimant, directing him to call her back by the close of business. The claimant stated at the end of the day he attempted to respond to the voicemail. He did not recall when he called, what number he called but that he did not leave a message. When the claimant did not make contact with IWD as directed, he did not follow up the following day or thereafter to provide the requested information. The claimant does not dispute the wages reported by the employer.

Consequently, upon reviewing the wages reported by both the claimant and employer, the agency determined the following incorrect payments were made to the claimant:

WEEK ENDING	WAGES PER CLAIMANT	WAGES PER EMPLOYER	UI BENEFITS PAID	UI BENEFITS ENTITLED	UNDERPAYMENT OF BENEFITS	OVERPAYMENT OF BENEFITS
04/29/17	301.00	380.00	180.00	101.00		79.00
05/06/17	315.00 (W) 421.00 (V)	359.00	0	122.00	122.00	0
05/13/17	311.00	380.00	170.00	101.00		69.00
05/20/17	350.00	444.00	131.00	0		131.00
05/27/17	210.00	288.00	271.00	193.00		78.00
06/03/17	424.00	543.00	0	0		0
06/10/17	345.00	446.00	136.00	0		136.00
06/17/17	384.00	601.00	97.00	0		97.00
06/24/17	385.00	609.00	96.00	0		96.00
07/01/17	384.00	584.00	97.00	0		97.00
07/08/17	383.00	519.00	98.00	0		98.00
				SUBTOTAL	122.00	881.00
				NET TOTAL		\$759.00

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant has not established a good cause reason for having failed to report as directed.

The unemployment insurance law provides that a claimant must be able to work, available for work, and actively seeking employment. Iowa Code § 96.4(3). Under the unemployment insurance rules, a claimant who fails to report as directed to the Agency in response to a notice mailed to the claimant is deemed unavailable for work. 871 IAC 24.23(11) and 871 IAC 871-24.2(1)e.

The first issue in this case is whether the claimant is ineligible for benefits effective July 9, 2017, because he did not report to the Agency on July 14, 2017, as directed. The credible evidence presented is the claimant was made aware that he could be denied benefits if he failed to report when directed by a representative of Iowa Workforce Development, (Department Exhibit C2-F), and that he received the notice to report for the fact-finding interview on July 14, 2017 (Department Exhibit A-4). The notice to report contained another warning that failure to participate could jeopardize the claimant’s benefits (Department Exhibit A-4). The claimant acknowledged he received the phone call at the scheduled time but elected not to pick up or respond to the request for information left via voicemail. Based on the evidence, the claimant has not established a good cause reason for failing to report as directed.

The next issue is whether the claimant properly reported his wages with his weekly continued claims or whether he was overpaid benefits. Based on the evidence presented, the administrative law judge concludes the claimant did not report the correct wages earned for the period between April 23, 2017 and July 8, 2017. The claimant did not dispute the wages presented by the employer (Department Exhibit B-1) which were compared to the claimant’s

reported wages with his weekly continued claims (Department Exhibit B-2 and C-4). These were the wages that were to be discussed during the fact-finding interview. As a result of the claimant's failure to properly report his wages, he was overpaid benefits in the amount of \$759.00. This amount was correctly calculated based upon the wages reported by the employer in comparison to the benefits paid to the claimant based upon his inaccurate wages report.

Based on the evidence presented, the administrative law judge concludes the claimant failed to establish a good cause reason for his failure to attend the July 14, 2017 and therefore benefits must be denied July 9, 2017 through July 27, 2017. Further, the underlying issue of his correct wages earned for the period of April 23, 2017 through July 8, 2017, resulted in a valid overpayment of \$759.00.

DECISION:

The July 17, 2017, (reference 03) unemployment insurance decision is affirmed. The claimant has not established a good cause reason for failing to report as directed. The underlying issue of wages was the result of a reporting error which resulted in a valid overpayment of \$759.00. Benefits are denied effective July 9, 2017, through July 27, 2017, and the overpayment is subject to recovery.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn