

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ABDULLA A ALAJRAWEE
Claimant

APPEAL 18A-UI-07161-DB

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 11/29/15
Claimant: Appellant (4)**

Iowa Code § 96.3(7) – Overpayment of Benefits

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the June 29, 2018 (reference 02) Iowa Workforce Development (“IWD”) unemployment insurance decision that found claimant was overpaid unemployment insurance benefits of \$1,876.00 because claimant incorrectly reported, or failed to report, earnings. The parties were properly notified of the hearing. An in-person hearing was held in Des Moines, Iowa on July 24, 2018. The claimant participated personally. Kevan Irvine participated on behalf of IWD. Claimant’s Exhibits A and B were admitted. IWD Exhibits 1 through 7 were admitted. The administrative law judge took official notice of the claimant’s unemployment insurance benefits records.

ISSUE:

Did IWD correctly determine that claimant was overpaid unemployment insurance benefits and was the overpayment amount correctly calculated?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant filed a claim for unemployment insurance benefits with an effective date of November 29, 2015. IWD conducted an audit and determined that claimant earned wages, holiday pay, vacation pay and bonuses but incorrectly reported the earnings while he was filing his weekly-continued claims for benefits.

IWD received documentation from the employer to verify the claimant’s earnings. See Exhibit 6. The employer reported wages, holiday pay, vacation pay, and bonuses earned by claimant from November 29, 2015 through November 26, 2016; however, it did not accurately report the wages earned when worked from Sunday through Saturday each week, rather, it reported the wages earned by claimant during the employer’s own pay period. See Exhibit 6 comparing with Exhibit B. The employer’s pay period ran from Friday through Thursday each week. See Exhibit B.

The claimant's weekly benefit amount for his claim year effective November 29, 2015 was \$447.00. For the purpose of unemployment insurance benefits, the following chart lists the wages (rounded to the nearest dollar), holiday pay, vacation pay, and bonus pay earned by claimant during the period investigated by IWD. The following chart also lists the benefits paid, benefits claimant was entitled to, and any underpayment or overpayment for the week.

WEEK ENDING	WAGES plus HOLIDAY PAY/ BONUS PAY/ VACATION PAY EARNED	BENEFITS PAID	BENEFITS ENTITLED	UNDERPAYMENT	OVERPAYMENT
12/05/2015	579.00	0.00	0.00	0.00	0.00
12/12/2015	831.51 bonus pay	447.00	447.00	0.00	0.00
12/19/2015	0.00	442.00	447.00	5.00	0.00
12/26/2015	116.00 holiday pay	442.00	442.00	0.00	0.00
01/02/2016	1,300.00 116.00 holiday pay	0.00	0.00	0.00	0.00
01/09/2016	798.00 116.00 holiday pay	0.00	0.00	0.00	0.00
01/16/2016	440.00	0.00	118.00	118.00	0.00
01/23/2016	717.00	0.00	0.00	0.00	0.00
01/30/2016	625.00	0.00	0.00	0.00	0.00
02/06/2016	420.00	0.00 due to additional claim filing	0.00	0.00	0.00
02/13/2016	325.00	225.00	233.00	8.00	0.00
02/20/2016	306.00	368.00	252.00	0.00	116.00
02/27/2016	0.00	442.00	447.00	5.00	0.00
03/05/2016	0.00	442.00	447.00	5.00	0.00
03/12/2016	0.00	442.00	447.00	5.00	0.00
03/19/2016	0.00	442.00	447.00	5.00	0.00
03/26/2016	536.00	0.00	0.00	0.00	0.00
04/02/2016	466.00	138.00	0.00	0.00	138.00
04/09/2016	546.00	108.00	0.00	0.00	108.00
04/16/2016	541.00	123.00	0.00	0.00	123.00
04/23/2016	109.00	447.00	447.00	0.00	0.00
04/30/2016	438.00	183.00	120.00	0.00	63.00
05/07/2016	542.00	0.00	0.00	0.00	0.00
05/14/2016	525.00	138.00	0.00	0.00	138.00
05/21/2016	962.00	0.00	0.00	0.00	0.00
05/28/2016	504.00	168.00	0.00	0.00	168.00
06/04/2016	282.00 122.00 holiday pay	243.00	154.00	0.00	89.00
06/11/2016	436.00	198.00	122.00	0.00	76.00
06/18/2016	516.00	238.00	0.00	0.00	238.00
06/25/2016	586.00	0.00	0.00	0.00	0.00
07/02/2016	439.00	198.00	119.00	0.00	79.00
07/09/2016	483.00 122.00 holiday pay 891.14 bonus	0.00	0.00	0.00	0.00

07/16/2016	317.00	318.00	241.00	0.00	77.00
07/23/2016	649.00	0.00	0.00	0.00	0.00
07/30/2016	450.00 902.19 vacation	193.00	0.00	0.00	193.00
08/06/2016	571.00	113.00	0.00	0.00	113.00
08/13/2016	638.00	0.00	0.00	0.00	0.00
08/20/2016	831.00	0.00	0.00	0.00	0.00
08/27/2016	398.00	213.00	160.00	0.00	53.00
09/03/2016	158.00	447.00	400.00	0.00	47.00
09/10/2016	429.00 122.00 holiday pay	0.00	0.00	0.00	0.00
09/17/2016	650.00	0.00	0.00	0.00	0.00
09/24/2016	415.00	213.00	143.00	0.00	70.00
10/01/2016	607.00	0.00	0.00	0.00	0.00
10/08/2016	217.00	378.00	341.00	0.00	37.00
10/15/2016	600.00	0.00	0.00	0.00	0.00
10/22/2016	426.00	228.00	132.00	0.00	96.00
10/29/2016	95.00	447.00	447.00	0.00	0.00
11/05/2016	0.00	447.00	447.00	0.00	0.00
11/12/2016	652.00	0.00	0.00	0.00	0.00
11/19/2016	1,027.00	0.00	0.00	0.00	0.00
11/26/2016	485.00 122.00 holiday pay	0.00	0.00	0.00	0.00
			Subtotal:	151.00	2,022.00
			Total:		1,871.00

Claimant's administrative records establish that he filed an additional claim effective February 7, 2016, as such, no benefit payment was made for the weekly-continued claim during the benefit week-ending February 6, 2016. Claimant's total overpayment owed to IWD is \$1,871.00.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes IWD did not correctly calculate the claimant's overpayment of benefits. Claimant is overpaid benefits of \$1,871.00 between November 29, 2015 and November 26, 2016.

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.
- 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.

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 nearest dollar, in excess of one-fourth of the individual's weekly benefit amount. This rule is intended to implement Iowa Code sections 96.3, 96.4 and 96.19(38).

Iowa Admin. Code r. 871—24.13(2)-(4) provides:

24.13(2) Deductible payments from benefits.

The following payments are considered as wages and are deductible from benefits on the basis of the formula used to compute an individual's weekly benefit payment as provided in rule 871—24.18(96):

- a. Holiday pay. However, if the actual entitlement to the holiday pay is subsequently not paid by the employer, the individual may request an underpayment adjustment from the department.
- b. Commissions. However, the commission payment is only deductible when based on service performed by the individual during the period in which the individual is also claiming benefits.
- c. Incentive pay. However, the incentive payment is only deductible when based on service performed by the individual during the period in which the individual is also claiming benefits.
- d. Strike pay. However, the strike pay is only deductible when it is a payment received for services rendered and the individual is otherwise eligible for benefits.
- e. Remuneration other than cash. The cash value of all remuneration payable in any medium other than cash, board, rent, housing, lodging, meals, or similar advantage, is only deductible when based on service performed by the individual during the period in which the individual is also claiming benefits.
- f. Stand-by pay. When an individual is paid to hold oneself in readiness for a call to specific work for an employer but is not called, since the work is given to another, the payment is stand-by pay which is deductible from benefits when earned by the individual during the period when the individual is claiming benefits.
- g. Tips or gratuity. However, the amount of the tips or gratuity is only deductible when based on service performed by the individual during the period in which the individual is also claiming benefits.

24.13(3) Fully deductible payments from benefits.

The following payments are considered as wages; however, such payments are fully deductible from benefits on a dollar-for-dollar basis:

- a. Wage interruption insurance payment. Any insurance payment received or due from wage interruption insurance because of fire, disaster, etc.
- b. Excused personal leave. Excused personal leave, also referred to as casual pay or random pay, is personal leave with pay granted to an employee for absence from the job because of personal reasons. It shall be treated as vacation and be fully deductible in the manner prescribed in rule 871—24.16(96).
- c. Wages in lieu of notice, separation allowance, severance pay and dismissal pay.
- d. Workers' compensation, temporary disability only. The payment shall be fully deductible with respect to the week in which the individual is entitled to the workers' compensation for temporary disability, and not to the week in which such payment is paid.
- e. Pension, retirement, annuity, or any other similar periodic payment made under a plan maintained and contributed to by a base period or chargeable employer. An individual's weekly benefit amount shall only be reduced by that portion of the payment which is the same percentage as the percentage contribution of the base period or chargeable employer to the plan.

24.13(4) Nondeductible payments from benefits.

The following payments are not considered as wages and are not deductible from benefits:

- a. Self-employment income. However, the individual must meet the benefit eligibility requirements of Iowa Code section 96.4(3).
- b. Bonuses. The bonus payment is only nondeductible when based on service performed by the individual before the period in which the individual is also claiming benefits.
- c. Remuneration for work performed by the individual claiming benefits in exchange for county relief in the form of groceries, rent, etc.
- d. Payment for unused sick leave.
- e. National guard duty pay. This includes reserve unit drill pay for any branch of the armed service.
- f. Supplemental unemployment benefit plans approved by the department. See 871—subrule 23.3(1), paragraph “e,” for criteria and employer procedure for obtaining department approval.
- g. Pension to the blind.

- h. Payment for terminal leave. Any payment received by military personnel for unused leave upon discharge.
- i. Compensation for military service-connected disability from the Department of Veterans Affairs.
- j. Payments to the surviving spouse of a regular or disability pension based on the work of the deceased spouse.
- k. Deferred wage compensation. Remuneration received by the individual for wages earned in a period prior to the individual's claim for benefits shall not be deductible during the period in which the individual is claiming benefits.
- l. Witness and jury fees. These fees are reimbursement for expenses and are not considered as wages.
- m. Supplemental security income. This payment is nondeductible because it is financed by income taxes and not social security taxes and is based on need factors such as age, mental or physical disability, and personal income, and not on previous employment.
- n. Federal social security benefit and social security disability payments.
- o. Payments conditional upon the release of any rights.
- p. Payments requiring the individual to work through a specific day to be eligible. This rule is intended to implement Iowa Code sections 96.3(3), 96.5, 96.5(5), 96.11(1), and 96.19(38).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.*

In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* The Administrative Law Judge finds that claimant's Exhibit B, paystubs provided by the employer, are the most credible evidence of amounts earned by claimant during specific periods. If a paystub was not present in Exhibit B, the Administrative Law Judge finds that the amount that the employer reported to IWD in Exhibit 6 to be credible.

Claimant was not entitled to benefits for the week-ending February 6, 2016 because an additional claim dated February 7, 2016 was filed. Based upon the calculations listed above, claimant is overpaid benefits of \$1,871.00 between November 29, 2015 and November 26, 2016.

DECISION:

The June 29, 2018 (reference 02) unemployment insurance decision is modified in favor of appellant. The claimant is overpaid benefits of \$1,871.00 between November 29, 2015 and November 26, 2016 due to incorrectly reporting wages, holiday pay, vacation pay, or bonus pay.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs