

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TIMOTHY R HOLLENBECK
Claimant

D & L MASONRY INC
Employer

APPEAL 22A-UI-07732-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 11/24/19
Claimant: Appellant (1)

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Code § 96.5(5) – Payment – Severance pay, disability, pension

STATEMENT OF THE CASE:

Claimant filed an appeal from the March 28, 2022 (reference 03) unemployment insurance decision that found claimant was overpaid unemployment insurance (UI) benefits in the gross amount of \$1,233.00 for the five-week period between March 29, 2020 and May 2, 2020 because he incorrectly reported the wages he earned from D & L Masonry. The parties were properly notified of the hearing. A telephone hearing was held on May 20, 2022. Claimant participated. Employer participated through Bonnie Vanden Bosch, Treasurer. Iowa Workforce Development (IWD) did not participate. No exhibits were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant is totally, partially or temporarily unemployed.
Whether claimant correctly reported wages earned.
Whether claimant is eligible for benefits based on wages earned.
Whether claimant is overpaid UI benefits.

FINDINGS OF FACT:

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

Claimant filed an initial claim for benefits effective November 24, 2019. Claimant's weekly benefit amount was \$481.00. Claimant filed weekly claims for the five-week period between March 29, 2020 and May 2, 2020. During that period, claimant was employed by D & L Masonry.

For the benefit week ending April 4, 2020, claimant earned \$513.00 in gross wages. Claimant reported earnings of \$180.00 on his weekly claim and received a partial benefit payment of \$421.00

For the benefit week ending April 11, 2020, claimant earned \$603.00 in gross wages. Claimant reported no earnings on his weekly claim and received a full benefit payment of \$481.00.

For the benefit week ending April 18, 2020, claimant earned \$279.00 in gross wages. Claimant reported earnings of \$250.00 on his weekly claim and received a partial benefit payment of \$351.00.

For the benefit week ending April 25, 2020, claimant earned \$828.00 in gross wages. Claimant reported earnings of \$450.00 and received a partial benefit payment of \$151.00.

For the benefit week ending May 2, 2020, claimant earned \$855.00 in gross wages. Claimant reported earnings of \$450.00 and received a partial benefit payment of \$151.00.

REASONING AND CONCLUSIONS OF LAW:

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

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 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 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.

For the benefit weeks ending April 4, 2020, April 1, 2020, April 25, 2020 and May 2, 2020, claimant worked for his regular employer and earned more than \$496.00 (his weekly benefit amount of \$481.00 plus \$15.00). Therefore, claimant was not considered partially unemployed and was not entitled to benefits. For those four weeks, claimant was overpaid UI benefits in the amount of \$1,204.00.

For the week ending April 18, 2020, claimant worked for his regular employer and earned less than \$496.00. Therefore, claimant was partially unemployed and was entitled to partial benefits. Claimant received a partial benefit payment of \$351.00 when he was only entitled to a partial benefit payment of \$322.00, according to the following calculation:

$$\begin{aligned} \$279.00 \text{ (wages)} - \$120.25 \text{ (25\% of WBA)} &= \$158.75 \text{ (wage deduction)} \\ \$481.00 \text{ (WBA)} - \$158.75 \text{ (wage deduction)} &= \$322.25 \text{ (partial weekly benefit amount)} \end{aligned}$$

For the week ending April 18, 2020, claimant was overpaid UI benefits in the amount of \$29.00.

The administrative law judge concludes that claimant has been overpaid UI in the gross amount of \$1,233.00 for the five-week period between March 29, 2020 and May 2, 2020. Claimant is required to repay those benefits.

DECISION:

The March 28, 2022 (reference 03) unemployment insurance decision is affirmed. Claimant incorrectly reported his wages earned. Claimant is overpaid UI in the amount of \$1,233.00, which he must repay.



Adrienne C. Williamson
Administrative Law Judge
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May 25, 2022
Decision Dated and Mailed

acw/ACW