

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CHRISTY J SCHAKEL
Claimant

APPEAL NO. 22A-UI-07883-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 02/07/21
Claimant: Appellant (3R)**

Iowa Code § 96.3(7) - Recovery of Benefit Overpayment
Iowa Code § 96.1A(37) – Total, Partial, Temporary Unemployment
Iowa Code § 96.5(5) – Other Compensation

STATEMENT OF THE CASE:

On March 22, 2022, Christy Schakel (claimant/appellant) appealed the Iowa Workforce Development (“IWD”) decision dated March 16, 2022 (reference 01) that concluded the claimant was overpaid unemployment insurance benefits in the amount of \$612.00 between February 21 and March 6, 2021 due to a failure to report wages earned. The decision further found claimant overreported her earnings and was underpaid in other weeks. The decision found the net overpayment was \$288.00.

A telephone hearing was held on May 12, 2022, pursuant to due notice. Appeal Nos. 22A-UI-07883-AD-T and 22A-UI-07886-AD-T are related and were heard together, forming a single record. Employer The Garden Gate Landscaping Ltd received notice of the hearing but a representative did not appear to participate. Claimant participated personally. Claimant’s Exhibit 1 was admitted. The administrative law judge took official notice of the administrative record, including the fact-finding documents contained in the file.

ISSUE:

Was the claimant overpaid unemployment insurance benefits (UI)?

Was the claimant totally, partially, or temporarily unemployed?

Did the claimant correctly report wages earned?

Is the claimant eligible for benefits based on wages earned?

FINDINGS OF FACT:

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

Claimant began working for employer in 1999. She is employed seasonally during the warmer months. She works hours as they are available in the winter months, typically consisting of snow removal and landscape design work.

Claimant filed an original claim for UI with an effective date of February 7, 2021. Weekly claims were then filed from the benefit week ending February 13, 2021 through the benefit week ending March 13, 2021. Claimant reported wages earned and received unemployment insurance benefits during that period as follows:

BWE-DATE	RPT-CODE	AMT-RP	ISSUE-DT	P	PAY-CODE	AMOUNT
02/13/21	OVER15	520.00	02/19/21	4	PAID-D	178.00
02/20/21	OVER15	283.00	02/22/21	2	PAID-D	415.00
02/27/21	OVER15	197.00	03/01/21	2	PAID-D	501.00
03/06/21	OVER15	193.00	03/08/21	2	PAID-D	505.00
03/13/21	CLEAR	.00	03/17/21	2	PAID-D	559.00

On July 27, 2021, IWD performed a cross-check of wages reported by claimant and wages actually earned for the week(s) filed. Employer reported claimant earned wages in the amount of \$282.00 in the week ending February 13; \$197.00 in the week ending February 20; \$304.00 in the week ending February 27; \$986.00 in the week ending March 6; and \$0.00 in the week ending March 13, 2021.

Claimant's weekly benefit amount during the period in question was \$559.00. The weekly benefit amount plus \$15.00 is \$574.00.

Prior to the hearing claimant reviewed her timecards for the period between February 21 and March 6, 2021. She earned gross wages in the amount of \$102.45 for the week ending February 27, 2021 and \$721.28 for the week ending March 6, 2021. Claimant did not review her timecards for the other weeks filed and so was unsure of the hours worked and wages earned in those weeks. When filing weekly claims claimant was reporting wages as they were paid rather than earned. Claimant also believes employer was incorrectly reporting the wages earned in its response to IWD's cross-check of wages, due to the schedule on which employer pays employees.

The administrative law judge finds claimant earned wages in the amount of \$102.45 for the week ending February 27, 2021 and \$721.27 in the week ending March 6, 2021. Claimant was therefore eligible for benefits in the amount of \$559.00 in the week ending February 27, 2021 and \$0.00 in the week ending March 6, 2021. As set forth above, claimant received benefits in the amount of \$501.00 in the week ending February 27, 2021 and \$505.00 in the week ending March 6, 2021.

Claimant did not review her timecards for the other weeks filed as those weeks were not listed on the notice of hearing and she did not believe they were at issue. Claimant was unable to access that information during the hearing.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated March 16, 2022 (reference 01) is MODIFIED in favor of the Department and REMANDED for further investigation.

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 Code section 96.5(5) provides:

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 contributions 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.

The administrative law judge finds the wages claimant reported during the hearing based on the review of her timecards is accurate. The administrative law judge finds claimant earned wages in the amount of \$102.45 for the week ending February 27, 2021 and \$721.27 in the week ending March 6, 2021. Claimant was therefore partially unemployed and eligible for benefits in the amount of \$559.00 in the week ending February 27, 2021 and not totally, partially or temporarily unemployed and ineligible for benefits in the week ending March 6, 2021.

As set forth above, claimant received benefits in the amount of \$501.00 in the week ending February 27, 2021 and \$505.00 in the week ending March 6, 2021. The wages reported at that time were not accurate. Claimant was therefore underpaid in the amount of \$58.00 in the week ending February 27, 2021 and overpaid in the amount of \$505.00 for the week ending March 6, 2021. The net overpayment for those two weeks is thus \$447.00.

Claimant did not review her timecards for the other weeks filed as those weeks were not listed on the notice of hearing and she had no notice they were at issue. Claimant was unable to access that information during the hearing. The decision does not explain what other weeks were at issue and the administrative law judge further notes that it does not appear claimant had an opportunity to participate in a fact-finding process prior to the decision being issued.

The administrative law judge makes no finding as to whether claimant was overpaid or underpaid UI in the other weeks filed, as the evidence available for those weeks does not appear to be reliable and claimant was not on notice and therefore unprepared to provide accurate wage and hour information for those weeks. This matter is therefore remanded to the Investigations and Recovery Bureau of IWD for a fact-finding investigation and determination as to whether claimant properly reported wages and was eligible for benefits in the other weeks filed, with notice and opportunity to participate being provided to claimant prior to the issuing of a determination.

DECISION:

The decision dated March 16, 2022 (reference 01) is MODIFIED in favor of the Department. Claimant was underpaid in the amount of \$58.00 in the week ending February 27, 2021 and overpaid in the amount of \$505.00 for the week ending March 6, 2021. The net overpayment for those two weeks is thus \$447.00.

REMAND:

This matter is REMANDED to the Investigations and Recovery Bureau of IWD for a fact-finding investigation and determination as to whether claimant properly reported wages and was eligible for benefits in the other weeks filed, with notice and opportunity to participate being provided to claimant prior to the issuing of a determination.



Andrew B. Duffelmeyer
Administrative Law Judge

May 17, 2022
Decision Dated and Mailed

abd/abd