

State of Wisconsin



Labor and Industry Review Commission

Melissa A Impens

Employee

Amazon Fulfillment Center

Employer

Hearing No. 24003588MD

**Unemployment Insurance
Decision¹**

Dated and Mailed:

October 11, 2024

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The commission **modifies and affirms** in part and **reverses** in part the appeal tribunal decision. Accordingly, the employee is eligible for benefits, if otherwise qualified. There is no overpayment and no administrative penalty as a result of this decision.

By the Commission:

/s/

Michael H. Gillick, Chairperson

/s/

Georgia E. Maxwell, Commissioner

/s/

Marilyn Townsend, Commissioner

¹ **Appeal Rights:** See the blue enclosure for the time limit and procedures for obtaining judicial review of this decision. If you seek judicial review, you **must** name the following as defendants in the summons and the complaint: the Labor and Industry Review Commission, all other parties in the caption of this decision or order (the boxed section above), and the Department of Workforce Development. Appeal rights and answers to frequently asked questions about appealing an unemployment insurance decision to circuit court are also available on the commission's website, <http://lirc.wisconsin.gov>.

Procedural Posture

This case is before the commission to consider the employee's eligibility for unemployment insurance benefits. An administrative law judge of the Unemployment Insurance Division of the Department of Workforce Development held a hearing and issued a decision. The commission received a timely petition for review. The commission has considered the petition and the positions of the parties, and it has reviewed the evidence submitted at the hearing. Based on its review, the commission makes the following:

Findings of Fact and Conclusions of Law

The employee began working for the employer, an online retailer, as a warehouse associate in 2015. March 15, 2020 was the employee's last day of work. She stopped working due to a back injury. Her doctor indicated she could work with restrictions, but the employer did not accommodate her restrictions.

The employee received short-term disability payments from an insurance carrier through an insurance plan that was a benefit of her employment with the employer. After six months, she began receiving long-term disability payments from an insurance carrier through an insurance plan that was a benefit of her employment with the employer.

The employee received holiday pay in 2020 and reported it on her weekly certifications.

The disability payments received by the employee were not wages within the meaning of Wis. Stat. § 108.02(26). The payments are not treated as wages under Wis. Stat. § 108.04(12)(e), were not sick pay within the meaning of Wis. Stat. § 108.05(5m), and do not affect the employee's benefit payments under Wis. Stat. § 108.05(3)(dm). The employee is therefore eligible for benefits, without any reduction in her weekly benefit amount due to her disability payments.

The claimant was not required to report her disability payments on her weekly claim certifications and therefore did not conceal information from the department when she did not report the payments. There is no overpayment, administrative penalty, or future benefit amount reduction associated with these payments.

Memorandum Opinion

The payments received by the employee, other than those reported as holiday pay, were disability payments, not wages. Disability payments may be required to be reported on weekly claim certifications and affect an employee's weekly benefit amount if they meet the definition of sick pay in Wis. Stat. § 108.05(5m). However, the employee received her disability payments from an insurance company, not directly from the employer and there is no evidence that the payments were made at the employee's usual rate of pay. They therefore do not meet the definition of sick pay. Worker's compensation payments may also be reportable and affect an employee's benefit payment amount as described in Wis. Stat. §§ 108.05(e)(dm) and

108.04(12)(e). However, the payments at issue here were not worker's compensation payments.

The employee made arguments in her petition for review related to weeks 22, 24, 25, and 27 of 2020. These weeks were not at issue in the appeal tribunal decisions petitioned for review and the commission declines to take any action related to these weeks. If an overpayment is being assessed for these weeks and no appealable determination has been issued, the employee may request one from the department.

The administrative law judge's finding that the employee did not conceal information from the department is affirmed. The administrative law judge's finding that the employee was erroneously paid benefits due to her failure to report her disability payments is reversed.

cc: VICTOR FORBERGER