

**IOWA DEPARTMENT OF INSPECTIONS & APPEALS
DIVISION OF ADMINISTRATIVE HEARINGS, UI APPEALS BUREAU**

STEPHNE K NELSON
Claimant

APPEAL NO. 22A-UI-17813-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WINTERSET HOTEL GROUP LLC
Employer

OC: 03/22/20
Claimant: Appellant (1)

Iowa Code Section 96.3(7) - Overpayment
Iowa Code Section 96.1A(37) – Temporary & Partial Unemployment

STATEMENT OF THE CASE:

On October 9, 2022, Stephne Nelson (claimant) filed a timely appeal from the October 6, 2022 (reference 01) decision that held the claimant was overpaid \$729.00 in regular state benefits for 11 weeks between March 29, 2020 and July 4, 2020, based on the deputy's conclusion the claimant incorrectly reported wages earned with Winterset Hotel Group, L.L.C. After due notice was issued, the appeal hearing started on November 1, 2022 and concluded on November 16, 2022. Claimant participated. Charles Rauterberg represented the employer and presented additional testimony through Billie Brown. The hearing in this matter was consolidated with the hearing in Appeal Number 22A-UI-17814-JT-T. Exhibits 1, 2, 3 and A were received into evidence. Exhibit A is the claimant's online appeal. Exhibit 1 is the 15 page packet of Team Member Schedules. Exhibit 2 is the 24-page packet of clock in/clock out records. Exhibit 3 is comprised of the eight paystubs. Department Exhibits D-1 through D-8 were received into evidence.

ISSUES:

Whether the claimant was overpaid \$729.00 in regular state benefits for 11 weeks between March 29, 2020 and July 4, 2020.

Whether the claimant was partially and/or temporarily unemployed during the 11 weeks between March 29, 2020 and July 4, 2020.

FINDINGS OF FACT:

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

Stephne Nelson (claimant) established an original claim for benefits that was effective March 2, 2020. Iowa Workforce Development set the weekly benefit amount at \$301.00. Throughout the claim period, the claimant was employed by Winterset Hotel Group, L.L.C., doing business as Cobblestone, as a full-time hotel night auditor (clerk). The claimant's wage was \$12.00 an hour during the relevant period. The claimant reported wages and received regular state benefits as follows:

PAYMENT-RECORDS..				***** UI *****		
BWE-DATE	RPT-CODE	AMT-RP	ISSUE-DT	P	PAY-CODE	AMOUNT
03/28/20	OVER15	264.00	03/30/20	2	PAID-D	112.00
04/04/20	OVER15	252.00	04/06/20	2	PAID-D	124.00
04/11/20	OVER15	252.00	04/13/20	2	PAID-D	124.00
04/18/20	OVER15	252.00	04/20/20	2	PAID-D	124.00
04/25/20	OVER15	252.00	04/27/20	2	PAID-D	124.00
05/02/20	OVER15	252.00	05/04/20	2	PAID-D	124.00
05/09/20	OVER15	252.00	05/11/20	2	PAID-D	124.00
05/16/20	OVER15	252.00	05/18/20	2	PAID-D	124.00
05/23/20	OVER15	360.00	05/26/20	2	PAID-W	.00
05/30/20	OVER15	357.00	06/01/20	2	PAID-W	.00
06/06/20	OVER15	274.00	06/08/20	2	PAID-D	102.00
06/13/20	OVER15	277.00	06/15/20	2	PAID-D	99.00
06/20/20	OVER15	298.00	06/22/20	2	PAID-D	78.00
06/27/20	OVER15	277.00	06/29/20	2	PAID-D	99.00
07/04/20	OVER15	242.00	07/06/20	2	PAID-D	134.00
07/11/20	OVER15	277.00	07/13/20	2	PAID-D	99.00
07/18/20	OVER15	268.00	07/20/20	2	PAID-D	108.00
07/25/20	OVER15	260.00	07/29/20	2	PAID-D	116.00

The claimant underreported her earned weekly wages throughout the claim period and attributes this to the employer's use of a Monday through Sunday work schedule versus Iowa Workforce Development's use of Sunday through Saturday benefit weeks.

The claimant received \$600.00 in weekly Federal Pandemic Unemployment Compensation (FPUC) for each of the above-referenced weeks for which she received regular benefits. The claimant's eligibility for the FPUC benefits depended on her eligibility for regular benefits for the same week.

On October 14, 2020, Iowa Workforce Development mailed a Request of Wage Records to the employer regarding the period of March 29, 2020 through July 4, 2020. On October 28, 2020, the employer's payroll agent responded and certified an accurate statement of the claimant's work hours and wages for the audited period as follows:

<u>Benefit Week End Date</u>	<u>Hours Worked</u>	<u>Wages Earned</u>
4/4/20	22	264.00
4/11/20	22	264.00
4/18/20	22	306.00 (incl. 126.00 in holiday pay)
4/25/20	22	264.00
5/2/20	21.25	255.00
5/9/20	31	372.00
5/16/20	21	252.00
5/23/20	35	420.00
5/30/20	34	450.00 (incl. 126.00 in holiday pay)
6/6/20	34.75	417.00
6/13/20	39.75	477.00
6/20/20	39.5	474.00
6/27/20	39.5	474.00
7/4/20	31.75	381.00

During the period of March 29, 2020 through June 27, 2020, the claimant worked all the hours the employer had available for her. During the week that ended July 4, 2020, the claimant requested two days off in connection with her birthday.

Upon receipt of the wage information provided by the employer, an Iowa Workforce Development representative redetermined the claimant's benefit eligibility for each of the weeks between March 29, 2020 and July 4, 2020 for which the claimant received benefits. See Exhibit D-6, Audit for Reported Wages. The only week for which the claimant's report matched the employer's accurate report was the week ending May 16, 2020. The deputy did not need to redetermine the claimant's eligibility for that week. Because the claimant had reported wages for the weeks that ended May 23 and May 30, 2020 that exceeded the weekly benefit amount plus \$15.00 and, therefore, did not receive benefits for those weeks, the deputy did not need to redetermine the claimant's eligibility for benefits for those two weeks. The deputy accurately determined that during those weeks when the claimant's earned wages exceeded the \$301.00 weekly benefit amount plus \$15.00 (\$316.00) the claimant was not eligible for unemployment insurance benefits. Those weeks included the weeks ending May 9 and all seven weeks between May 17 through July 4, 2020. For those weeks for which the accurate wages reported by the employer did not equal the \$301.00 weekly benefit amount plus \$15.00 (\$316.00), the deputy accurately determined the difference between the weekly regular benefits the claimant received and the weekly regular benefits for which the claimant was eligible. The deputy arrived at an accurate \$729.00 total amount as the difference between the regular benefits for which the claimant was eligible and the greater amounts paid to the claimant based on the claimant's incorrect reporting of the wages. The deputy then entered the overpayment decisions from which the claimant appeals in the present matter and the companion appeal matter.

REASONING AND CONCLUSIONS OF LAW:

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.

Gross wages must be reported to Iowa Workforce Development as part of the weekly claim for the week in which the wages were earned. See Iowa Administrative Code rules 871-24.2(1)(g)(3)(2) and 871-24.2(2)(e)(2).

The reporting requirement is addressed in the 2019 Unemployment Insurance Claimant Handbook at page 8:

What to Report on the Weekly Claim?

You must report all gross earnings and gross wages on the weekly claim. Wages are reportable when earned, not when paid. Gross earnings or gross wages are your earnings before taxes or other payroll deductions are made. For additional information, please refer to the page on reportable income.

2019 Unemployment Insurance Claimant Handbook Updated 1-1-20.pdf.

Iowa Admin. Code rule 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.

Iowa Code section 96.1A(37) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

The IWD deputy accurately determined the claimant was overpaid \$729.00 in regular benefits for 11 weeks between March 29, 2020 and July 4, 2020. See Exhibit D-6. The claimant's earned wages for the week ending May 9, and for each of the seven weeks between May 17, 2020 and July 4, 2020 exceeded the claimant's weekly benefit amount plus \$15.00. Accordingly, the claimant cannot be deemed partially unemployed during those weeks and is not eligible for benefits for those weeks. Accordingly, all the benefits the claimant received or the week ending May 9, and the seven weeks between May 17, 2020 and July 4, 2020 are overpayments of benefits. During each of the five weeks between March 29, 2020 and May 2, 2020, and during the week that ended May 16, 2020, the claimant earned wages did not meet her weekly benefit amount plus \$15.00. During those weeks the claimant was partially unemployed and, therefore, eligible for benefits, provided she met all other eligibility requirements. However, because the claimant underreported her earned wages for each of the five weeks between March 29, 2020 and May 2, 2020, the claimant was overpaid benefits for each of those weeks, as accurately determined by the IWD deputy. The claimant must repay the overpaid regular state benefits.

DECISION:

The October 6, 2022 (reference 01) decision is AFFIRMED. The claimant was overpaid \$729.00 in regular state benefits for 11 weeks between March 29, 2020 and July 4, 2020, due to the claimant incorrectly reported wages earned with Winterset Hotel Group, L.L.C. The benefits were overpaid for each of the six weeks between March 29, 2020 and May 9, 2020 and for each of the five weeks between May 31, 2020 and July 4, 2020. The claimant must repay the overpaid benefits.



James E. Timberland
Administrative Law Judge

November 22, 2022
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.