

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

CECILIA R LAMM
Claimant

APPEAL 22A-UI-14940-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FIREPLACE SUPERSTORE DM LLC
Employer

OC: 03/29/20
Claimant: Appellant (3)

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment

STATEMENT OF THE CASE:

On July 11, 2022, claimant Cecilia R. Lamm filed an appeal from the July 1, 2022 (reference 01) unemployment insurance decision that found she was overpaid \$364.00 in regular unemployment insurance benefits, due to both an overpayment and an underpayment of benefits, following a failure to correctly report wages earned while filing weekly claims. The parties were properly notified of the hearing. A telephonic hearing was held at 8:00 a.m. on Friday, August 19, 2022. Appeal numbers 22A-UI-14940-LJ-T and 22A-UI-14941-LJ-T were heard together and created one record. The claimant, Cecilia R. Lamm, participated. The employer, Fireplace Superstore DM, L.L.C., participated through Christopher Bump, General Manager. The administrative law judge took official notice of the administrative record.

ISSUE:

Was the claimant totally, partially, or temporarily unemployed effective March 29, 2020?
Was the claimant overpaid regular unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for Fireplace Superstore DM, L.L.C., sometime in late 1998 or early 1999. She has worked for the company as a salesperson throughout her employment. Claimant has worked both part-time hours and full-time hours during various periods of employment. In January 2020, claimant elected to work part-time hours due to a conflict with a coworker. Claimant's wage records reflect she was working a part-time schedule with inconsistent hours on a weekly basis during the second quarter, third quarter, and fourth quarter of 2020, and during the first quarter of 2021. Claimant then resumed full-time hours during the second quarter of 2021.

Claimant opened her claim for unemployment insurance benefits with an effective date of March 29, 2020, after the employer closed its store temporarily due to the COVID-19 pandemic. The store remained closed for approximately one month. During this time, no work was available for

claimant or any of her coworkers. Iowa's Governor Reynolds had declared that businesses should remain closed for a period of time for safety reasons.

The employer reopened in late April 2020, and claimant and her coworkers returned to work. Claimant immediately resumed her part-time schedule. She did not report working any hours or earning any wages when she filed for benefits the first week that she had returned to work. Claimant explained she was confused, as Iowa Workforce Development's weekly claims operate on a "Sunday to Saturday" week, but the employer issues weekly paychecks on a "Friday to Thursday" week. Therefore, claimant's wage reporting was always one week behind.

Claimant continued filing her weekly claims through the week ending February 27, 2021. Between the week of April 26 through May 2, 2020, and the week of February 21 through February 27, 2021, claimant filed 38 weekly continued claims for benefits. She received \$4,323.00 in gross regular unemployment insurance benefits during these 38 weeks; this included one week of full unemployment benefits and thirty-seven weeks of partial unemployment benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was totally employed effective March 29, 2020, for the four-week period ending April 25, 2020. Thereafter, claimant was neither totally nor partially unemployed and was not eligible for benefits.

Iowa Code § 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Code § 96.19(38) 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.

Iowa Admin. Code r. 871-24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

Under Iowa Employment Security Law, an individual must be totally or partially unemployed to be eligible for benefits. Iowa Code § 96.19(38). Total unemployment is when someone has received no wages and performed no services during any given week. *Id.* In this case, the claimant was totally unemployed for the first four weeks she filed for benefits: the weeks ending April 4, 2020; April 11, 2020; April 18, 2020; and April 25, 2020. The parties agree claimant worked no hours and earned no wages those weeks, as the business was closed due to the pandemic. Claimant is eligible for full benefits those four weeks.

The next question is whether she is partially unemployed. In order to be partially unemployed, an individual must be laid off from full-time employment or working less than his or her regular full-time work week. *Id.* If an individual is employed in a part-time position working the same hours and wages as contemplated at hire, he or she cannot be considered partially unemployed. Iowa Admin. Code r. 871-24.23(26). In this case, claimant requested a part-time position in early 2020 after an incident with a coworker. Claimant elected to work part-time hours; this was not a forced reduction in hours due to the COVID-19 pandemic or a decline in business but a voluntary reduction in hours requested to change her scheduled days at the store. As the claimant was working in a part-time job in the same hours and wages specifically requested, the claimant is not partially unemployed and is not eligible for benefits.

The next determination is the amount that claimant was overpaid regular unemployment insurance benefits. Iowa Code § 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.

(Emphasis added.) Many individuals were encouraged to file claims for unemployment insurance benefits during the COVID-19 pandemic and now, years later, are being found ineligible for the benefits they received. These ineligibility determinations do not necessarily mean that the individuals engaged in any wrongdoing when claiming benefits during a time of grave uncertainty. In this case, there is no indication the claimant engaged in any fraudulent activity or acted in anything other than good faith. However, she received benefits that she was not entitled to as a part-time employee. Those benefits must be recovered.

The administrative law judge concludes that the claimant has been overpaid regular unemployment insurance benefits in the amount of \$4,323.00. That amount must be repaid to the agency.

DECISION:

The July 1, 2022 (reference 01) unemployment insurance decision is modified in favor of the employer/appellee. Claimant was neither totally nor partially unemployed effective April 26, 2020. The claimant has been overpaid unemployment insurance benefits in the amount of \$4,323.00 and is obligated to repay the agency those benefits.



Elizabeth A. Johnson
Administrative Law Judge

September 29, 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> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

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 se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

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.