

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

STEPHNE K NELSON
Claimant

APPEAL NO. 22A-UI-17814-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WINTERSET HOTEL GROUP LLC
Employer

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

P.L. 116-136, §2104 – Federal Pandemic Unemployment Compensation 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 02) decision that held the claimant was overpaid \$3,600.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits for six weeks between May 3, 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-17813-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 \$3,600.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits for six weeks between May 3, 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.

In Appeal Number 22A-UI-17813-JT-T, the undersigned administrative law judge affirmed the IWD deputy's determination that the claimant was not eligible for regular benefits for the benefit weeks ending May 9, 2020 and for each of the five weeks between May 31, 2020 and July 4, 2020.

REASONING AND CONCLUSIONS OF LAW:

PL116-136, Sec. 2104 provides, in pertinent part:

(b) Provisions of Agreement

(1) Federal pandemic unemployment compensation.--Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to

(A) the amount determined under the State law (before the application of this paragraph), plus

(B) an additional amount of \$600 (in this section referred to as "Federal Pandemic Unemployment Compensation").

....

(f) Fraud and Overpayments

(2) Repayment.—In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled, the State shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation to the State agency, except that the State agency may waive such repayment if it determines that—

(A) the payment of such Federal Pandemic Unemployment Compensation was without fault on the part of any such individual; and

(B) such repayment would be contrary to equity and good conscience.

(3) Recovery by state agency —

(A) In general.—The State agency shall recover the amount to be repaid, or any part thereof, by deductions from any Federal Pandemic Unemployment Compensation payable to such individual or from any unemployment compensation payable to such individual under any State or Federal unemployment compensation law administered by the State agency or under any other State or Federal law administered by the State agency which provides for the payment of any assistance or allowance with respect to any week of unemployment, during the 3-year period after the date such individuals received the payment of the Federal Pandemic Unemployment Compensation to which they were not entitled, in accordance with the same procedures as apply to the recovery of overpayments of regular unemployment benefits paid by the State.

(B) Opportunity for hearing.—No repayment shall be required, and no deduction shall be made, until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the individual, and the determination has become final.

(4) Review.—Any determination by a State agency under this section shall be subject to review in the same manner and to the same extent as determinations under the State unemployment compensation law, and only in that manner and to that extent.

Because the claimant was not eligible for regular benefits for the benefit week ending May 9, 2020 and for each of the five benefit weeks between May 31, 2020 and July 4, 2020, the claimant was also not eligible for the \$600.00 in FPUC benefits she received for each of those weeks. The claimant is overpaid FPUC benefits totaling \$3,600.00 for six weeks that included the week ending May 9, 2020 and each of the five weeks between May 31, 2020 and July 4, 2020. The claimant must repay the overpaid FPUC benefits unless the claimant applies for and is approved waiver of repayment of FPUC benefits. See below.

DECISION:

The October 6, 2022 (reference 02) decision is AFFIRMED. The claimant is overpaid FPUC benefits totaling \$3,600.00 for six weeks that included the week ending May 9, 2020 and each of the five weeks between May 31, 2020 and July 4, 2020. The claimant must repay the overpaid FPUC benefits unless the claimant applies for and is approved waiver of repayment of FPUC benefits. See below.



James E. Timberland
Administrative Law Judge

November 22, 2022
Decision Dated and Mailed

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Note to Claimant: This decision determines you have been overpaid FPUC under the CARES Act. If you disagree with this decision, you may file an appeal by following the instructions on the final page of this decision. Additionally, instructions for requesting a waiver of this FPUC overpayment can be found at <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment>. If this decision becomes final and you are not eligible for a FPUC waiver, you will have to repay the overpaid FPUC benefits you received.

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.