

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

JEFFREY R HOWARD
Claimant

APPEAL 22A-UI-12113-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 01/17/21
Claimant: Appellant (4)**

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

STATEMENT OF THE CASE:

On May 11, 2022, the claimant filed an appeal from the May 3, 2022, (reference 02) unemployment insurance decision that determined claimant was overpaid regular unemployment insurance benefits in the amount of \$589.00 for a two-week period ending February 13, 2021, due to underreported or unreported wages earned with the employer, B&S Tile & Excavation, LLC. The parties were properly notified about the hearing. A telephone hearing was held on August 11, 2022. Appeal number 22A-UI-12114-AR-T was heard together and created one record. Claimant, Jeffrey R. Howard, participated personally. Employer, B&S Tile & Excavation, LLC, received notice as an interested party, but did not participate. The administrative law judge took official notice of the administrative record.

ISSUES:

Was the claimant overpaid unemployment insurance benefits?
Was the claimant totally, partially, or temporarily unemployed?
Is 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 filed a claim for unemployment insurance benefits with an effective date of January 17, 2021. At the time, he was preparing to be laid off. Claimant's weekly benefit amount was \$493.00. He filed claims for benefits for the weeks of January 17, 2021, and January 24, 2021, and reported wages during each of those weeks. For the week of January 17, 2021, he reported wages in an amount that caused him to be ineligible for unemployment insurance benefits. During the week of January 24, 2021, he reported \$330.00 in wages, which entitled him to a partial weekly benefit payment. After January 30, 2021, claimant did not work or earn wages because he began his planned layoff period.

Iowa Workforce Development (IWD) made an inquiry into wages earned by claimant. The employer reported two weeks in which claimant earned wages in amounts that did not match

claimant's report. The employer reported the following information, which formed the basis for IWD's conclusion that an overpayment had been made to claimant:

Week Ending	Claimant Wages Reported	Employer Wages Reported	Benefits Paid	Benefits Entitled	Overpayment
1/30/21	330	1340	286	0	286
2/13/21	0	426	493	190	303
				Total:	589

Claimant testified that his records indicated he worked 21.9 hours the week ending January 30, 2021. At a pay rate of \$19.41 per hour, claimant's gross wage that week was \$426.00. Claimant denied working more than 60 hours that week as the employer reported. He also denied having worked or having earned any wages after the week that ended January 30, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes:

Iowa Code section 96.3(7) states:

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.

Iowa Code section 96.5(5) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 contribution 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.

Iowa Admin. Code r. 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 administrative law judge concludes that the employer's wage report was inaccurate based on the evidence presented at hearing. For the benefit week ending January 30, 2021, claimant worked less than his regular hours and earned less than his weekly benefit amount, plus \$15.00. Therefore, claimant was partially unemployed and was eligible for partial benefits in the amount of \$190.00, according to the following calculation:

$\$426 \text{ (wages)} - \$123.25 \text{ (25\% of WBA)} = \$302.75 \text{ (wage deduction)}$
 $\$493 \text{ (WBA)} - \$302.75 \text{ (wage deduction)} = \$190.00 \text{ (partial weekly benefit amount)}$

The weekly benefit amount is rounded to the lower multiple of one dollar. Claimant received partial benefits in the amount of \$286.00 for the benefit week ending January 30, 2021, but was only entitled to partial benefits in the amount of \$190.00. Therefore, claimant was overpaid UI in the amount of \$96.00 for the week ending January 30, 2021. Claimant is required to repay those benefits.

For the week ending February 13, 2021, claimant did not work and earned no wages. He was totally unemployed and entitled to his full weekly benefit amount of \$493.00.

DECISION:

The May 3, 2022, (reference 02) unemployment insurance decision is MODIFIED in favor of the appellant. Claimant was overpaid benefits in the amount of \$96.00, which must be repaid.



Alexis D. Rowe
Administrative Law Judge

__September 26, 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.