

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

MICHELLE D ANDRADE
Claimant

APPEAL NO. 22A-UI-19786-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CORNER CAFÉ INDEPENDENCE INC
Employer

OC: 06/21/20
Claimant: Appellant (1)

Iowa Code Section 96.3(7) – Overpayment, Lost Wage Assistance Payments

STATEMENT OF THE CASE:

On December 15, 2022, Michelle Andrade (claimant) filed a timely appeal from the December 12, 2022 (reference 04) decision that held she was overpaid \$900.00 in Lost Wage Assistance Payments (LWAP) for three weeks between August 2, 2020 and August 29, 2020, based on the deputy's conclusion that claimant incorrectly reported wages earned with Corner Café Independence, Inc. After due notice was issued, a hearing was held on January 12, 2023. Claimant participated. Sally Brown represented the employer. There were four appeal numbers set for a consolidated hearing: 22A-UI-19781-JT-T, 22A-UI-19784-JT-T, 22A-UI-19786-JT-T and 22A-UI-19787-JT-T. Department Exhibits D-1 through D-15 were received into evidence.

ISSUE:

Whether the claimant was overpaid \$900.00 in Lost Wage Assistance Payments (LWAP) for three weeks between August 2, 2020 and August 29, 2020, based on the deputy's conclusion that claimant incorrectly reported wages earned with Corner Café Independence, Inc.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Michelle Andrade (claimant) established Iowa original claims for benefits that were effective June 16, 2019 and June 21, 2020.

In connection with the 2019 original claim, Iowa Workforce Development set the weekly benefit amount at \$529.00. The claimant did not receive benefits in connection with the 2019 claim until after she established an "additional claim" for benefits that Iowa Workforce Development deemed effective March 29, 2022. In connection with March 29, 2020 additional claim, the claimant made weekly claims for each of the 11 weeks between March 29, 2022 and June 13, 2022. For each of those 11 weeks, the claimant received regular benefits and \$600.00 in Federal Pandemic Unemployment Compensation (FPUC). The claimant's eligibility for the FPUC benefits depended on the claimant's eligibility for regular benefits for the same week.

The claimant reported wages and IWD disbursed regular benefits as follows:

PAYMENT-RECORDS..					***** UI *****	
BWE-DATE	RPT-CODE	AMT-RP	ISSUE-DT	P	PAY-CODE	AMOUNT
04/04/20	OVER15	36.00	04/17/20	4	PAID-D	529.00
04/11/20	CLEAR	.00	04/17/20	4	PAID-D	529.00
04/18/20	CLEAR	.00	04/20/20	2	PAID-D	529.00
04/25/20	CLEAR	.00	04/27/20	2	PAID-D	529.00
05/02/20	CLEAR	.00	05/04/20	2	PAID-D	529.00
05/09/20	CLEAR	.00	05/11/20	2	PAID-D	529.00
05/16/20	OVER15	60.00	05/18/20	2	PAID-D	529.00
05/23/20	OVER15	411.00	05/26/20	2	PAID-D	250.00
05/30/20	OVER15	292.00	06/01/20	2	PAID-D	369.00
06/06/20	OVER15	220.00	06/08/20	2	PAID-D	441.00
06/13/20	OVER15	368.00	06/15/20	2	PAID-D	293.00

In connection with the June 21, 2020 original claim, Iowa Workforce Development set the weekly benefit amount at \$454.00. The claimant made weekly claims for each of the 38 weeks between June 21, 2022 and March 13, 2022. The claimant reported wages and IWD disbursed regular benefits as follows:

PAYMENT-RECORDS..					***** UI *****	
BWE-DATE	RPT-CODE	AMT-RP	ISSUE-DT	P	PAY-CODE	AMOUNT
06/27/20	OVER15	347.00	07/13/20	2	PAID-D	168.00
07/04/20	OVER15	409.00	07/13/20	2	PAID-D	106.00
07/11/20	OVER15	96.00	07/13/20	2	PAID-D	412.00
07/11/20	SPLIT	42.00	12/09/22	4	PAID-W	.00
SPECIAL	UPAY-EARN	42.00	12/09/22	4	OFFSET	42.00
07/18/20	OVER15	164.00	07/20/20	2	PAID-D	351.00
07/18/20	SPLIT	5.00	12/09/22	4	PAID-W	.00
SPECIAL	UPAY-EARN	5.00	12/09/22	4	OFFSET	5.00
07/25/20	OVER15	280.00	07/27/20	2	PAID-D	235.00
07/25/20	SPLIT	107.00	12/09/22	4	PAID-W	.00
SPECIAL	UPAY-EARN	107.00	12/09/22	4	OFFSET	107.00
08/01/20	OVER15	200.00	08/03/20	2	PAID-D	315.00
08/01/20	SPLIT	60.00	12/09/22	4	PAID-W	.00
SPECIAL	UPAY-EARN	60.00	12/09/22	4	OFFSET	60.00
08/08/20	OVER15	362.00	08/11/20	2	PAID-D	153.00
08/15/20	OVER15	391.00	08/31/20	2	PAID-D	124.00
08/22/20	OVER15	320.00	08/31/20	2	PAID-D	195.00
08/22/20	SPLIT	22.00	12/09/22	4	PAID-W	.00
SPECIAL	UPAY-EARN	22.00	12/09/22	4	OFFSET	22.00
08/29/20	OVER15	422.00	08/31/20	2	PAID-D	93.00
09/05/20	OVER15	499.00	09/10/20	4	PAID-W	.00
09/12/20	OVER15	425.00	09/15/20	2	PAID-D	142.00
09/19/20	OVER15	462.00	09/21/20	2	PAID-D	105.00
09/26/20	OVER15	275.00	09/30/20	2	PAID-D	292.00
10/03/20	OVER15	405.00	10/05/20	2	PAID-D	162.00
10/10/20	OVER15	212.00	10/12/20	2	PAID-D	355.00
10/17/20	OVER15	297.00	10/19/20	2	PAID-D	270.00
10/24/20	OVER15	232.00	10/26/20	2	PAID-D	335.00
10/31/20	OVER15	181.00	11/02/20	2	PAID-D	386.00
11/07/20	OVER15	35.00	11/09/20	3	PAID-D	454.00
11/14/20	OVER15	490.00	11/23/20	2	PAID-W	.00
11/21/20	OVER15	90.00	11/23/20	2	PAID-D	454.00
11/28/20	OVER15	350.00	11/30/20	2	PAID-D	217.00
12/05/20	OVER15	395.00	12/07/20	2	PAID-D	172.00

12/12/20	CLEAR	.00	12/14/20	2	PAID-D	454.00
12/19/20	OVER15	790.00	12/21/20	2	PAID-W	.00
12/26/20	OVER15	138.00	12/28/20	2	PAID-D	429.00
01/02/21	OVER15	617.00	01/05/21	2	PAID-W	.00
01/09/21	OVER15	400.00	01/11/21	2	PAID-D	167.00
01/16/21	OVER15	415.00	01/19/21	2	PAID-D	152.00
01/23/21	OVER15	265.00	01/25/21	2	PAID-D	302.00
01/30/21	OVER15	450.00	02/02/21	2	PAID-D	117.00
02/06/21	OVER15	300.00	02/09/21	2	PAID-D	267.00
02/13/21	CLEAR	.00	02/15/21	2	PAID-D	454.00
02/20/21	OVER15	180.00	02/22/21	2	PAID-D	387.00
02/27/21	OVER15	335.00	03/01/21	2	PAID-D	232.00
03/06/21	OVER15	145.00	03/08/21	2	PAID-D	422.00
03/13/21	OVER15	525.00	03/15/21	2	PAID-W	.00

For each week between June 21, 2020 and July 25, 2020 for which the claimant received regular benefits, IWD also paid \$600.00 in Federal Pandemic Unemployment Compensation (FPUC).

For each of the five weeks between July 26, 2020 and August 29, 2020, IWD paid the claimant \$300.00 in federal Lost Wage Assistance Payments (LWAP). The claimant's eligibility for the LWAP benefits was based on her eligibility for regular benefits for the same week.

For each of the weeks between January 7, 2021 and March 13, 2021 for which the claimant received regular benefits, IWD also paid \$300.00 in FPUC benefits. The claimant's eligibility for the FPUC benefits depended on the claimant's eligibility for regular benefits for the same week.

Throughout the period that began with the March 29, 2020 additional claim and that ended with the weekly claim for the week that ended March 13, 2021, the claimant was employed by Corner Café Independence, Inc. as a part-time food server. The claimant began the employment in 2019. The employer, a restaurant business, is located in Missouri. The employer temporarily suspended operations effective March 31, 2020, pursuant to a COVID-19-related Missouri state mandate. The claimant established the March 29, 2022 additional claim in response to the temporary layoff. Prior to the layoff, the claimant averaged 24-25 hours a week. The claimant's hourly wage during the relevant period in 2020 was \$4.73. The claimant's hourly wage during the relevant period of 2021 was \$5.15 an hour. The claimant also received tips, which included cash tips and credit card tips. The employer at all relevant times tracked the claimant's work hours, credit card tips and cash tips via the employer's payroll system. The employer required that the claimant report 100 percent of her cash tips at the end of the shift when she signed out via the employer's point of sale (POS) system.

Through wage audits Iowa Workforce Development initiated in December 2020, March 2021, and December 2022 and accurate wage, hours work, and tip information provided by the employer, an Iowa Workforce Development investigator accurately determined the claimant had under-reported wages, including tips throughout the audited periods. When the deputy redetermined the claimant's benefit eligibility, the deputy accurately concluded the claimant had been overpaid \$220.00 in regular benefits for five weeks between March 29, 2020 and June 13, 2020 and had been overpaid \$2,408.00 in regular benefits between June 21, 2020 and March 6, 2021. The audit and redetermination revealed the claimant was not eligible for any benefits for the three weeks between August 2, 2020 and August 29, 2020, which meant she was not eligible for the \$900.00 in LWAP benefits she received for those three weeks. The audit and redetermination revealed the claimant was not eligible for any benefits for the three weeks

between January 3, 2021 and January 30, 2021, which meant she was not eligible for the \$900.00 in FPUC benefits she received for those three weeks.

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.

Because the claimant was not eligible for regular benefits for the three weeks between August 2, 2020 and August 29, 2020, she was also not eligible for the \$900.00 in Lost Wage Assistance Payments (LWAP) she received for those three weeks and the benefits are an overpayment. The claimant must repay the overpaid LWAP benefits unless she applies for and is approved for waiver of repayment of LWAP benefits.

DECISION:

The December 12, 2022 (reference 04) decision is AFFIRMED. The claimant was overpaid \$900.00 in Lost Wage Assistance Payments (LWAP) she received for those three weeks and the benefits are an overpayment. The claimant must repay the overpaid LWAP benefits unless she applies for and is approved for waiver of repayment of LWAP benefits.



James E. Timberland
Administrative Law Judge

January 23, 2023
Decision Dated and Mailed

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Note to Claimant: This decision determines you have been overpaid LWAP benefits. 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 LWAP overpayment can be found at <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment>. If this decision becomes final and you are not eligible for a LWAP waiver, you will have to repay the overpaid LWAP benefits.

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.