

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

ERIN S ELLERBACH
Claimant

APPEAL 22A-UI-08540-DS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CULL-MAC OF IOWA INC
Employer

**OC: 04/05/2020
Claimant: Appellant (1)**

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Code § 96.19(38) – Total, Partial, Temporary Unemployment
Iowa Code § 96.5(5) – Other Compensation

STATEMENT OF THE CASE:

On April 5, 2022, claimant Erin Ellerbach filed an appeal from the unemployment insurance decision dated April 1, 2022, Reference 07, that concluded she was overpaid unemployment insurance benefits in the gross amount of \$719.00 because she did not report, or incorrectly reported wages earned with this employer. The parties were properly notified of the hearing, and a notice was mailed to the parties' last known addresses of record for a telephone hearing to be held at 2:00 p.m. on May 17, 2022, at Des Moines, Iowa. The claimant appeared and participated in the hearing. Anthony Lehmann, President, appeared on behalf of the employer, Cull-Mac of Iowa, Inc. The administrative law judge took notice of claimant's unemployment insurance benefit records.

ISSUES:

Did the claimant correctly report wages earned?
Is the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

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

The claimant began working for this employer on June 12, 2019. She was discharged from the employer on June 1, 2020, for attendance. She was a Counter Worker and Cashier, and her supervisors were Bryan Accola and Trichia Ploessl. On March 30, 2020, the claimant left work and entered a treatment center for several weeks. The claimant's unemployment insurance claim and continuing weekly claims were all filed on her behalf by staff at the treatment center. The claimant was not able or available for work during this time period.

Although the claimant did not work during the weeks she was in treatment, she later returned to the employer in late April of 2020. The claimant missed work without calling her employer, in violation of the employer's attendance policy, on May 8, 2020, May 10, 2020, May 29, 2020, and June 1, 2020, at which time her employment ended. Whether the claimant's separation qualifies her for benefits was not addressed by the Benefits Bureau.

Her claim was filed on April 5, 2020, at the end of the first week she was at the treatment center. The claimant filed weekly continuing claims reflecting no wages until the week ending May 23, 2020, when she reported \$185.00 in wages. The claimant did in fact work and earn wages during the period of April 5, 2020, to July 4, 2020, but only reported some of the weeks.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons, the administrative law judge concludes that the claimant is overpaid unemployment insurance benefits.

Iowa Code section 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 Admin. Code r. 871-24.22(2)i(1) and (3) provide:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market....

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.

After returning to her employer, the claimant only reported wages for one of the weeks worked before the separation. The claimant is overpaid benefits, which must be repaid.

Whether the claimant's separation qualifies her for unemployment insurance benefits will be addressed if she files a new claim for benefits and the employer is in her base period.

DECISION:

The April 1, 2022, Reference 07, unemployment insurance decision is affirmed. The claimant is overpaid unemployment insurance benefits in the amount of \$719.00, which must be repaid.



David J. Steen
Administrative Law Judge
Iowa Department of Inspections & Appeals
Administrative Hearings Division - UI Appeals Bureau

August 8, 2022

Decision Dated and Mailed

djs/ac

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. *There is no filing fee to file an appeal with the Employment Appeal Board.*

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 file a petition for judicial review in district court.

2. If you do not file 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 www.iowacourts.gov/efile.
There may be a filing fee to file the petition in District Court.

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. *No hay tarifa de presentación para presentar una apelación ante la Junta de Apelación de Empleo.*

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 no presenta una apelación de la decisión del juez ante la Junta de Apelación de Empleo dentro de los quince (15) días, la decisión se convierte en una acción final de la agencia y tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días. Puede encontrar información adicional sobre cómo presentar una petición en www.iowacourts.gov/efile. *Puede haber una tarifa de presentación para presentar la petición en el Tribunal de Distrito.*

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.