

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

THOMAS R CLEMEN
Claimant

APPEAL NO. 23A-UI-03711-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 01/29/23
Claimant: Appellant (1)**

Iowa Code Section 96.3(7) - Overpayment

STATEMENT OF THE CASE:

On April 10, 2023, Thomas Clemen (claimant) filed a timely appeal from the April 5, 2023 (reference 03) decision that held the claimant was overpaid \$1,278.00 in benefits for four weeks between January 29, 2023 and February 25, 2023, based on the March 9, 2023 decision that disqualified the claimant for benefits for the affected period. After due notice was issued, a hearing was held on April 24, 2023. Claimant participated. The hearing in this matter was consolidated with the hearing in Appeal Number 23A-UI-03710-JT-T. Exhibits A through E were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, KCCO, KFFV & WAGE-B.

ISSUE:

Whether the claimant was overpaid \$1,278.00 in benefits for four weeks between January 29, 2023 and February 25, 2023, based on the March 9, 2023 decision that disqualified the claimant for benefits for the affected period.

FINDINGS OF FACT:

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

Thomas Clemen (claimant) established an original claim for benefits that was effective January 29, 2023. Iowa Workforce Development set the weekly benefit amount at \$419.00. the claimant received \$1,278.00 in benefits for the four weeks between January 29, 2023 and February 25, 2023.

On March 9, 2023, Iowa Workforce Development Benefits Bureau issued the reference 02 that denied benefits effective January 29, 2023, based on the deputy's conclusion that the claimant was still employed with Lowe's Home Centers, L.L.C. under the same hours and wages as in the original contract of hire and could not be considered partially unemployed within the meaning of the law. The reference 02 decision prompted and is the basis for the reference 03 overpayment decision from which the claimant appeals in the present matter. The reference 02 decision has been affirmed in Appeal Number 23A-UI-03710-JT-T due to an untimely appeal. The reference 02 decision remains in effect for the affected overpayment period.

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.

Because the reference 02 decision denied benefits for the period beginning January 29, 2023, and because the reference 02 decision remains in effective for the period between January 29, 2023 and March 4, 2023, the \$1,278.00 in benefits the claimant received for four weeks between January 29, 2023 and February 25, 2023 is an overpayment of benefits. The claimant must repay the overpaid benefits.

DECISION:

The April 5, 2023 (reference 03) decision is AFFIRMED. The claimant was overpaid \$1,278.00 in benefits for four weeks between January 29, 2023 and February 25, 2023, based on the March 9, 2023 (reference 02) decision that denied benefits for that period. The claimant must repay the overpaid benefits.



James E. Timberland
Administrative Law Judge

April 26, 2023
Decision Dated and Mailed

jet/scn

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.