

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

THOMAS J BROOKS

Claimant

**COMMONWEALTH ELECTRIC OF
THE MIDWEST**

Employer

APPEAL 22A-UI-14707-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/12/20

Claimant: Appellant (2)

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Code § 96.19(38) – Total and Partial Unemployment
Iowa Code § 96.5(5) – Other Compensation
Iowa Admin. Code r. 871-24.18 – Wage, earnings limitation

STATEMENT OF THE CASE:

Thomas J. Brooks, the claimant/appellant, filed an appeal from the June 21, 2022 (reference 04) unemployment insurance (UI) decision that concluded he was overpaid REGULAR (state) UI benefits in the gross amount of \$518.00 because he did not report wages earned with the employer for one week. The parties were properly notified of the hearing. A telephone hearing was held on September 8, 2022. Appeals 22A-UI-14707-DZ-T and 22A-UI-14709-DZ-T were heard together and formed one hearing record. Mr. Brooks participated personally. The employer did not participate in the hearing. The department did not participate in the hearing. The administrative law judge took official notice of the administrative record. Claimant's Exhibit A and Department's Exhibit 1 were admitted as evidence.

ISSUES:

Did Mr. Brooks correctly report wages earned?

Has Mr. Brooks been overpaid REGULAR (state) UI benefits?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Mr. Brooks began working for the employer in August 2019 as a full-time electrician apprentice. The employer paid him \$17.00 per hour and paid him on Sundays for the previous week.

Mr. Brooks worked a full week the week of April 5-11, 2020 and the employer paid him for his work on Sunday, April 12. Mr. Brooks went to work on Monday, April 13. Soon after he arrived, the employer furloughed him due to the COVID-19 pandemic. Mr. Brooks filed his UI claim that week, so the effective date of his claim is April 12, 2020. When he filed his claim, Mr. Brooks did not know that the employer would pay him for any hours for the week of April 12-18 since the employer sent him home almost immediately on Monday, April 13. On April 19, the employer paid Mr. Brooks for two hours of work on April 13.

In relevant part, Mr. Brooks filed weekly UI claims for the weeks of April 12-18, 2020 and April 19-25, 2020. Mr. Brooks reported wages in the gross amount of \$0.00 for the weeks of April 12-18, and April 19-25. Based on the wages he reported, IWD paid Mr. Brooks REGULAR (state) UI benefits in the gross amount of \$518.00 each week for both weeks.

IWD conducted an audit of Mr. Brooks' wages in December 2020 and asked the employer to report him weekly gross wages from April 12 through July 4 in 2020. In January 2021, the employer reported to IWD that it had paid Mr. Brooks \$1,105.00 for the week of April 12-18, and \$34.00 for the week of April 19-25. IWD accepted the employer's numbers as accurate and concluded that Mr. Brooks was not entitled to the \$518.00 in REGULAR (state) UI benefits he had already received for the week of April 12-18.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes: Mr. Brooks has not been overpaid REGULAR (state) UI benefits.

Iowa Code section 96.5(5) provides, in pertinent part:

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 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.

b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Mr. Brooks properly reported his wages from for the week of April 12-18, 2020. Mr. Brooks did not know the employer would pay him for two hours of work for April 13, so he reported \$0.00 in wages that week. Mr. Brooks is entitled to the \$518.00 in REGULAR (state) UI benefits he has already received for that week. Even if Mr. Brooks had reported earning \$34.00 that week, he still would be entitled to the \$518.00 in REGULAR (state) UI benefits he has already received for that week. Mr. Brooks has not been overpaid REGULAR (state) UI benefits.

DECISION:

The June 21, 2022 (reference 04) UI decision is REVERSED. Mr. Brooks has not been overpaid REGULAR (state) UI benefits.



Daniel Zeno
Administrative Law Judge

October 4, 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 adquiera 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.