

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

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**DIANA KRIENER**

Claimant

**APPEAL 22A-UI-14161-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CEDAR BEND HUMANE SOCIETY**

Employer

**OC: 04/05/20**

**Claimant: Appellant (3-R)**

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Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment

Iowa Code § 96.4(3) – Ability to and Availability for Work

Iowa Admin. Code r. 871—24.23(26) – Same Hours/Wages

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

On June 15, 2022, claimant Diana Kriener filed an appeal from the June 10, 2022 (reference 08) unemployment insurance decision that found she had a net overpayment of regular unemployment benefits based on a failure to properly report wages. The parties were properly notified of the hearing. A telephonic hearing was held at 1:00 p.m. on Tuesday, August 2, 2022. Appeal numbers 22A-UI-14161-LJ-T and 22A-UI-14162-LJ-T were heard together and created one record. The claimant, Diana Kriener, participated. The employer, Cedar Bend Humane Society, participated through Caitlyn Wegner, Administrative Assistant. The administrative law judge took official notice of the administrative record, which included the Request of Wage Records and claimant's unemployment insurance benefits records.

**ISSUES:**

Is the claimant totally, partially, or temporarily unemployed?

Is the claimant still employed with this employer at the same hours and wages?

Is the claimant overpaid regular unemployment insurance benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for the Cedar Bend Humane Society on August 10, 2016. She was hired by the employer as a part-time kennel attendant, and she worked part-time hours throughout her employment. Claimant requested a part-time position when she was hired and did not want to work full-time hours. As a part-time employee, the employer never guaranteed the claimant a set number of hours or days per week that she would work. Claimant's hours varied between fifteen and twenty-five hours per week, depending on the employer's staffing needs.

Claimant opened her claim for unemployment insurance benefits effective April 5, 2020, when the Cedar Bend Humane Society closed due to the COVID-19 pandemic. The employer had no work available for approximately six weeks. Claimant returned to work on June 3, 2020, and

has been working her regular part-time schedule since that time. She continued filing for unemployment insurance benefits after returning to work; claimant filed weekly claims through the week ending February 13, 2021.

Claimant filed for and has received regular unemployment insurance benefits in the gross amount of \$3,510.72 between April 5, 2020 and October 10, 2020. This includes \$2,168.72 in regular unemployment insurance benefits received between May 31, 2020 and October 10, 2020.

After claimant exhausted her claim for regular unemployment insurance benefits, she received Pandemic Emergency Unemployment Compensation ("PEUC") benefits through the week ending February 13, 2021.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was not eligible for any unemployment insurance benefits effective May 31, 2020.

#### ***Claimant's Eligibility for Benefits***

Iowa Code § 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 Code § 96.19(38) 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.

Iowa Admin. Code r. 871-24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

Under Iowa Employment Security Law, an individual must be totally or partially unemployed to be eligible for benefits. Iowa Code § 96.19(38). Total unemployment is when someone has received no wages and performed no services during any given week. *Id.* In this case, the claimant performed no services and earned no wages from the effective date of her claim – April 5, 2020 – through May 30, 2020. Claimant was totally unemployed each of those eight weeks and was eligible for her full weekly benefit amount each week.

The next question is whether she was partially unemployed for any remaining weeks. In order to be partially unemployed, an individual must be laid off from full-time employment or working less than his or her regular full-time work week. *Id.* If an individual is employed in a part-time position working the same hours and wages as contemplated at hire, she cannot be considered partially unemployed. Iowa Admin. Code r. 871-24.23(26). Here, the claimant was hired into and requested a part-time position at the Cedar Bend Humane Society. She has worked part-time hours during her entire employment. Her hours have fluctuated as was the expectation when she was hired. She continues to work for the employer in a part-time position with varying hours. As the claimant is working in a part-time job in the same hours and wages contemplated at hire, or agreed to shortly thereafter, the claimant has never been and is not now partially unemployed. Therefore, claimant is not eligible for partial unemployment insurance benefits for any other weeks that she filed for benefits.

### ***Claimant's Overpayment***

The next issue is to determine claimant's unemployment insurance benefit overpayment. 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.

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.

*A. Underpayment—May 24 through May 30, 2020*

The claimant reported that she returned to work on May 24 and earned \$85.00 in gross wages. When claimant reported these wages, her benefit amount that week was reduced from \$173.00 to \$131.00. The employer's records show claimant returned to work on June 3, 2020. I find the employer's testimony on this matter more credible, as they had access to the 2020 employment records. Therefore, I find claimant was not working that week and mistakenly reported wages, perhaps in anticipation of returning or perhaps out of confusion. This resulted in an underpayment of \$42.00 for the week ending May 30, 2020.

*B. Overpayment—May 31 through October 10, 2020*

When claimant returned to work on June 3, 2020, she was no longer eligible for unemployment insurance benefits. As explained above, she was not totally unemployed, and she was not partially unemployed. She was working in her regular part-time position under the same terms as she had always been employed with this employer. Therefore, claimant was not legally entitled to any of the benefits she received after May 30, 2020. The administrative law judge concludes that the claimant has been overpaid regular unemployment insurance benefits in the amount of \$2,168.72. That amount must be repaid to the agency.

*C. Net Overpayment*

Claimant was overpaid a total of \$2,168.72 in regular unemployment insurance benefits. However, she was also underpaid \$131.00 in regular unemployment insurance benefits. This results in a net overpayment of \$2,037.72. This amount must be repaid to Iowa Workforce Development.

**DECISION:**

The June 10, 2022 (reference 08) unemployment insurance decision is modified in favor of the employer. Claimant was totally unemployed for the week ending May 30, 2020. Effective May 31, 2020, claimant was neither totally nor partially unemployed, and she was not eligible for unemployment insurance benefits.

Claimant was overpaid \$2,168.72 in regular unemployment insurance benefits. She was underpaid \$131.00 in regular unemployment insurance benefits. This yields a net overpayment of **\$2,037.72**. This amount must be repaid to Iowa Workforce Development.

**REMAND:**

This matter is remanded to the Benefits Bureau of Iowa Workforce Development to determine whether claimant has been overpaid Pandemic Emergency Unemployment Compensation ("PEUC") benefits and to issue a decision with appeal rights consistent with that determination.



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Elizabeth A. Johnson  
Administrative Law Judge

September 30, 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  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://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](http://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.