

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

JASON M BOGE
Claimant

MONDELEZ GLOBAL LLC
Employer

APPEAL 22A-UI-17828-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/28/21
Claimant: Appellant (1)**

Iowa Code § 96.5(5)a and b – Deductions from Benefits

Iowa Admin. Code r. 871-24.13(3) – Fully Deductible Payments from Benefits

STATEMENT OF THE CASE:

On October 10, 2022, Jason M. Boge (claimant) filed an appeal from the October 6, 2022, reference 10, unemployment insurance (UI) decision that deducted workers' compensation temporary total disability (TTD) benefit payments from unemployment insurance benefits. After due notice was issued, a hearing was held by telephone conference on November 1, 2022, and was consolidated with the hearing for appeal 22A-UI-17829-SC-T. The claimant participated personally. Mondelez Global LLC (employer) did not respond to the hearing notice and did not participate. No exhibits were admitted into the record. The administrative law judge took official notice of the administrative record specifically the claimant's claim history.

ISSUE:

Were the claimant's workers' compensation TTD benefit payments correctly deducted from UI benefits?

FINDINGS OF FACT:

Having reviewed the record, the administrative law judge finds: The claimant filed their claim for unemployment insurance benefits effective November 28, 2021, and the weekly benefit amount (WBA) is \$459.00. They reactivated the claim on July 10, 2022 following a work-related injury. The claimant filed for benefits each week from July 10 through September 24, 2022.

The claimant also received TTD benefits beginning July 10, in the amount of \$408.31 per week, or \$409.00 a week when rounded up for reporting purposes. The claimant reported \$408.00 in benefits each week, but they reported them as wages instead of TTD. As a result, they received \$165.00 each week from unemployment insurance.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons, the administrative law judge concludes the TTD benefit payments were not deducted correctly from unemployment insurance benefits.

Iowa Code section 96.5(5) provides:

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 Admin. Code r. 871-24.13(3)d provides:

(3) Fully deductible payments from benefits. The following payments are considered as wages; however, such payments are fully deductible from benefits on a dollar-for-dollar basis:

d. Workers' compensation, temporary disability only. **The payment shall be fully deductible with respect to the week in which the individual is entitled to the workers' compensation for temporary disability, and not to the week in which such payment is paid.** [Emphasis added.]

For purposes of unemployment insurance, a claimant is allowed to earn up to one-quarter of their WBA before any deduction is made to their benefits for the week. But TTD is not defined as wages and is fully deductible from benefits without any earning allowance. The claimant reported TTD as wages, which means there was an earning allowance of \$114.00 before unemployment benefits were reduced (or \$459.00 divided by four), and only \$294.00 (or \$408.00 minus \$114.00) was deducted from the weekly benefits. As the TTD payments are deducted dollar-for-dollar, the correct amount of benefits to be paid is \$50.00 each week (or \$459 minus \$409). The claimant's TTD was not properly reported effective July 10, 2022.

DECISION:

The October 6, 2022, reference 10, decision is AFFIRMED. The claimant's workers' compensation temporary disability benefit payments were not correctly deducted effective July 10, 2022.



Stephanie R. Callahan
Administrative Law Judge

December 5, 2022
Decision Dated and Mailed

src/mh

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.