

IOWA DEPARTMENT OF INSPECTIONS & APPEALS  
DIVISION OF ADMINISTRATIVE HEARINGS  
Wallace State Office Building  
Des Moines, Iowa 50319

**Appeal Number:** 11-IWDUI-119  
**OC:** 5/23/10

**Claimant:** Appellant (1)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

**MEME GWEH**  
**2700 BLOOMINGTON LANE, APT C**  
**MUSCATINE, IA 52761**

**IOWA WORKFORCE DEVELOPMENT**  
**INVESTIGATION AND RECOVERY**  
**150 DES MOINES STREET**  
**DES MOINES IA 50309**

JOE WALSH, IWD  
NAEDA E. ERICKSON, Counsel for Claimant

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4<sup>th</sup> Floor Lucas Building, Des Moines, Iowa 50319.***

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.

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.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to the Department . 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. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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June 30, 2011

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(Decision Dated & Mailed)

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Section 96.5(5)(b) – Other compensation  
871 IAC 24.13 – Deductions from benefits

### STATEMENT OF THE CASE

Claimant Meme Gweh filed an appeal from an Iowa Workforce Development decision dated February 24, 2011, reference 01, which held that she was not eligible to receive unemployment benefits effective the week ending on 5/29/10, because she received workers' compensation payments for a temporary disability.

This case proceeded to a hearing by telephone on June 29, 2011. Appellant Meme Gweh appeared with counsel, Naeda Erickson, and testified. The appellant also presented testimony from Steven Fanyen. Investigator Karen Von Behren appeared and testified for Iowa Workforce Development (IWD). Exhibits 1 - 9 entered the record without objection.

### **FINDINGS OF FACT**

The appellant, Meme Gweh filed a claim for unemployment insurance benefits on May 25, 2010. IWD advisor, Griselda Menjivar assisted the appellant with the application process. Ms. Menjivar wrote that the appellant indicated that she had been laid off from Tyson Foods. The application form completed on that date so indicates. (Exhibits 7, 8). IWD approved benefits for the appellant at \$282 per week. (Von Behren testimony).

On February 4, 2011, IWD advisor Tony Rincon assisted the appellant with her weekly claim. When he raised the subject of work search activity, the appellant became defensive and stated that she could not work due to injury. When asked if she was receiving workers' compensation payments, the appellant was reluctant to answer, but her friend confirmed that this was true. Mr. Rincon referred the case to Investigator Von Behren. (Exhibit 9).

On February 9, 2011, IWD investigator Von Behren sent a notice to the appellant to attend an interview regarding the receipt of unemployment insurance benefits and worker's compensation. (Exhibits 2, 3). On February 23, 2011, the appellant and her counsel spoke with Ms. Von Behren and confirmed that the appellant had received \$357.65 per week in workers' compensation beginning May 12, 2010, due to a temporary disability from a work related injury at Tyson Foods. Those payments were ongoing. (Exhibit 6; Von Behren testimony). Tyson confirmed these payments via email. (Exhibit 5).

IWD issued the decision at issue (Exhibit 1), which found that the appellant was not eligible to receive unemployment benefits effective the week ending May 29, 2010, because she had been receiving worker's compensation payments for the entire time that she received unemployment benefits. (Von Behren testimony). This appeal followed.

The appellant and her boyfriend, Mr. Fanyen, testified that she told IWD about the workers' compensation payments and her temporary disability due to a work related injury at the time of her initial application. They stated that the appellant never indicated that she was laid off, and that IWD made an error on the application. The appellant agreed that her unemployment benefit had been \$282 per week and her worker compensation payment was \$357.65 per week. While the appellant did not dispute the figures, she stated and argued that she should not be responsible to repay an overpayment because any error was made by IWD and not her.

### **CONCLUSIONS OF LAW**

Iowa law provides that an individual is disqualified from unemployment insurance benefits for any week in which the individual received compensation for temporary disability under the workers' compensation law. However, the individual may still receive unemployment benefits during such a week if the workers' compensation payments were less than the unemployment benefits. In this instance, the unemployment benefits would be reduced by

the amount of the workers' compensation payment. Iowa Code 96.5(5). However, in the present case the amount of the workers' compensation exceeded the amount of the unemployment benefit.

The Iowa Administrative Code, at 871 IAC 24.13(3), also provides that workers' compensation payments are fully deductible from unemployment benefits.

The uncontested evidence in this case demonstrates that the appellant did receive workers' compensation payments during the period in which she received unemployment benefits. All parties agreed that the amount of the workers' compensation payment, \$357.65 per week, exceeded the amount of her unemployment benefit, \$282 per week. The law is clear and undisputed. This results in the appellant being ineligible for any unemployment benefit during the entire period that she received workers' compensation. Because her workers' compensation payments began on May 12, 2010, prior to her application for unemployment, she was not eligible at the time of her application and thereafter.

The record included some discussion of the appellant's responsibility for repayment of any overpayment. This hearing did not include this issue, and therefore, this decision does not address this issue.

### **DECISION**

The decision dated February 24, 2011, reference 01, is AFFIRMED. The claimant is ineligible to receive unemployment insurance benefits, effective the week ending May 29, 2010.

rhw