

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

CHRIS HONECK

Claimant

APPEAL 22A-UI-16398-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AUSTAD'S GOLF INC

Employer

OC: 03/15/20

Claimant: Appellant (4)

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

Iowa Code § 96.1A(37) – Definitions – Total, partial unemployment

Iowa Code § 96.5(5) – Payment – Severance pay, disability, pension

STATEMENT OF THE CASE:

On August 22, 2022, Chris Honek (claimant) filed an appeal from the August 10, 2022, reference 05, unemployment insurance decision that found the claimant was overpaid unemployment insurance (UI) benefits in the net amount of \$1,197.00 for the period between March 22 and May 9, 2020, because he incorrectly reported wages earned with Austad's Golf, Inc. (employer). The parties were properly notified of the hearing. A telephone hearing, consolidated with the hearing for appeal 22A-UI-16399-SC-T, began on September 19, 2022 and concluded on October 10, 2022. The claimant participated. The employer did not respond to the hearing notice and did not participate. The Claimant's Exhibit A was admitted into the record. Official notice was taken of the administrative record, specifically the fact-finding documents.

ISSUES:

Is the claimant totally, partially, or temporarily unemployed?

Did the claimant correctly report wages earned?

Is the claimant eligible for benefits based on the wages earned?

Was the claimant overpaid benefits?

FINDINGS OF FACT:

Having reviewed all the evidence in the record, the administrative law judge finds: The claimant was employed full-time with the employer until his hours were reduced due to the global pandemic. He filed an initial claim for benefits effective March 15, 2020. The claimant's weekly benefit amount was \$500.00.

The claimant was paid every two weeks. The following chart reflects the weeks that claimant filed ongoing weekly claims, the wages that claimant submitted on his weekly claims, the wages that the employer reported claimant earned every two weeks, the wages earned according to the Claimant's Exhibit A which is copies of his paychecks, and the amount of UI benefits paid to claimant:

Benefit Week Ending	Wages Submitted by Claimant	Wages Reported by Employer	Wages Earned in Exhibit A	UI Benefits Paid To Claimant
03/21/2020	\$368.00		\$368.00	\$257.00
03/28/2020	\$84.00		\$308.00	\$500.00
04/04/2020	\$116.00		\$116.00	\$500.00
04/11/2020	\$58.00	\$229.00	\$84.00	\$500.00
04/18/2020	\$195.00		\$195.00	\$430.00
04/25/2020	\$195.00	\$390.00	\$195.00	\$430.00
05/02/2020	\$195.00		\$195.00	\$430.00
05/09/2020	\$195.00	\$455.00	\$228.00	\$430.00

The claimant reported the gross wages earned but did not report commissions earned in the amount of \$225.00 during the week ending March 28, \$28.00 during the week ending April 11, or \$32.50 during the week ending May 9. The employer provided information consistent with bi-weekly payments and the Claimant's Exhibit A, copies of his paychecks.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons, the administrative law judge concludes the claimant has been overpaid unemployment insurance benefits in the amount of \$216.00, which must be repaid.

Iowa Code section 96.3(7) states:

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.

Iowa Code section 96.5(5) provides, in relevant 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.

...

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(3) provides:

3. Partial unemployment. An individual who is partially unemployed in any week as defined in section 96.1A, subsection 37, paragraph "b", and who meets the conditions of eligibility for benefits shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. The benefits shall be rounded to the lower multiple of one dollar.

Iowa Admin. Code r. 871-24.18 provides:

Wage-earnings limitation. An individual who is partially unemployed may earn weekly a sum equal to the individual's weekly benefit amount plus \$15 before being disqualified for excessive earnings. If such individual earns less than the individual's weekly benefit amount plus \$15, the formula for wage deduction shall be a sum equal to the individual's weekly benefit amount less that part of wages, payable to the individual with respect to that week and rounded to the lower multiple of one dollar, in excess of one-fourth of the individual's weekly benefit amount.

Under Iowa Employment Security Law, partial unemployment occurs when a person works and earns wages less than their weekly benefit amount plus fifteen dollars. See 2020 Iowa Code section 96.19(38)b. When a person is partially unemployed, they can earn up to 25 percent of their weekly benefit amount without any reduction in weekly benefits. Any wages earned over the 25 percent, reduces the weekly benefit amount dollar for dollar. The formula used is:

$$\begin{aligned} \$ (\text{wages}) - \$ (25\% \text{ of WBA}) &= \$ (\text{wage deduction}) \\ \$ (\text{WBA}) - \$ (\text{wage deduction}) &= \$ (\text{partial weekly benefit amount}) \end{aligned}$$

In this case, the claimant was partially unemployed each week he filed for benefits because he earned less than his weekly benefit amount in insured wages. He can earn \$125.00 in wages before the weekly benefit to which he is entitled is reduced. The following table shows the wages earned each week according to the claimant's testimony and Exhibit A, the amount of UI benefits paid to the claimant, and the amount of benefits for which he is entitled, the benefits paid to him, and the difference between the benefits paid and the benefits to which he was entitled:

Benefit Week Ending	Wages Earned in Exhibit A	UI Benefits for which Claimant is entitled	UI Benefits Paid To Claimant	Difference Between UI Benefits eligible and UI Benefits paid
03/21/2020	\$368.00	\$257.00	\$257.00	\$0.00
03/28/2020	\$308.00	\$317.00	\$500.00	(\$183.00)
04/04/2020	\$116.00	\$500.00	\$500.00	\$0.00
04/11/2020	\$84.00	\$500.00	\$500.00	\$0.00
04/18/2020	\$195.00	\$430.00	\$430.00	\$0.00
04/25/2020	\$195.00	\$430.00	\$430.00	\$0.00
05/02/2020	\$195.00	\$430.00	\$430.00	\$0.00
05/09/2020	\$228.00	\$397.00	\$430.00	(\$33.00)

The claimant has been overpaid \$216.00 in unemployment insurance benefits for the weeks ending March 28 and May 9, 2022. These benefits must be repaid. The other weeks the claimant correctly reported wages earned and was paid the correct amount in benefits.

DECISION:

The August 10, 2022, reference 05, unemployment insurance decision is MODIFIED IN FAVOR OF THE APPELLANT. The claimant was overpaid only \$216.00 in unemployment insurance benefits, which must be repaid.

A handwritten signature in blue ink, reading "Stephanie R Callahan" with a long horizontal flourish extending to the right.

Stephanie R. Callahan
Administrative Law Judge

November 1, 2022
Decision Dated and Mailed

src/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> 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 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.