

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

JOSEPH D KOURI
Claimant

MUSIC UNLIMITED CORP
Employer

APPEAL 22A-UI-07125-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Appellant (2)

Iowa Code § 96.3(7) – Overpayment of Lost Wage Assistance
Iowa Code § 96.5(5) – Deductions
Iowa Code § 96.19(38) – Total, Partial, Temporary Unemployment

STATEMENT OF THE CASE:

The claimant, Joseph Kouri, filed an appeal from the March 11, 2022, (reference 04) unemployment insurance decision that concluded he was overpaid \$1,500.00 in Lost Wage Assistance (LWA) benefits. After proper notice, a telephone hearing was conducted on June 6, 2022. The hearing was held jointly with appeal 22A-UI-07123-SN-T and 22A-UI-07124-SN-T. The claimant participated. Official notice of the administrative records was taken.

ISSUES:

Whether the claimant inaccurately reported wages from July 19, 2020 and October 3, 2020?
Whether the claimant is overpaid benefits?

FINDINGS OF FACT:

Having heard the testimony and having examined the evidence in the record, the administrative law judge finds:

The claimant filed for unemployment insurance benefits effective March 22, 2020. His weekly benefit amount on his 2020 claim year was \$378.00. The employer pays the claimant under two different hourly rates depending on whether he is delivering or performing work inside the store. The claimant also received commissions.

On January 31, 2021, Iowa Workforce Development Department requested wage records from July 4, 2020 through October 3, 2020. President Pam Donahue responded to the request. Payroll Officer Matt Hulscher testified that Ms. Donahue's responses cannot be relied upon because she was in and out of the hospital at the time she responded to the request. Mr. Hulscher believed Ms. Donahue was confused and reported pay the claimant received on biweekly paychecks rather than his earnings for each week.

The claimant testified he was confident in the earnings he reported when he filed his weekly claims. He did not have the ability to confirm or correct what he reported at the time he made weekly claims.

Mr. Hulscher testified he had access to wage records showing total gross pay for each week during this period. Mr. Hulscher testified he could separate whether the claimant was paid commissions or separate the hourly rate earnings into their respective job codes.

The following table displays side by side information describing the earnings from June 27, 2020 through October 3, 2020.¹ The “Earnings” column displays earnings reported by the claimant when he made his weekly claims.² The “Request of Wage Records Report” field displays information reported by Ms. Donahue in response to Iowa Workforce Development Department’s request for wage records from July 4, 2020 through October 3, 2020. The final field displays Mr. Hulscher’s testimony during the hearing based on records held by the employer.

Assigned Week	Earnings	Request of Wage Records Report	Employer Testimony at Hearing	Benefits Paid
06/27/20	\$300.00 (V \$200.00)	Prior to Scope	\$784.00 (H \$200.00)	\$ 00.00
07/04/20	\$433.00	\$784.00 (V \$200.00)	\$278.40 (V \$200.00)	\$ 00.00
07/11/20	\$549.00	\$832.00 (H \$100.00)	\$392.00	\$ 00.00
07/18/20	\$432.00	\$784.00	\$392.00	\$ 00.00
07/25/20	\$240.00	\$400.00	\$253.00 (V \$100.00)	\$232.00
08/01/20	\$362.00	\$816.00	\$362.00 (V \$100.00)	\$110.00
08/08/20	\$379.00	\$753.00	\$216.00 (V \$150.00)	\$ 93.00
08/15/20	\$88.00	\$654.50	\$237.50 (V \$150.00)	\$378.00
08/22/20	\$378.00	\$753.50	\$342.00	\$ 94.00
08/29/20	\$322.00	\$654.50	\$312.50	\$150.00
09/05/20	\$484.00	\$843.50	\$437.50	\$ 00.00
09/12/20	\$392.00 (H \$100.00)	\$00.00	\$306.00 (H \$100.00)	\$ 80.00
09/19/20	\$423.00	\$00.00	\$342.00	\$ 00.00
09/26/20	\$369.00	\$843.50	\$369.00	\$103.00
10/03/20	\$339.00	\$342.00	\$339.00	\$133.00

The administrative record showing quarterly reports shows the claimant received \$5184.00 in insured wages during the third quarter of 2020 which runs from July 1, 2020, through September 31, 2020. This information does not report earnings on a weekly basis, but rather what he received during that business quarter.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the has not been overpaid LWA benefits.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness’s testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In

¹ The administrative law judge expanded the scope of this table beyond what the representative listed on the underlying decision merely to display the discrepancies in the reports.

² This is referred to internally as the administrative record KCCO.

determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using his own common sense and experience, the administrative law judge finds the testimony of Payroll Officer Matt Hulscher more credible than claimant's testimony. He made this finding because Mr. Hulscher provided credible explanation for discrepancies on the employer's response to the wage records reports. The claimant also said he believed Mr. Hulscher's testimony was accurate.

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 Code section 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.

The claimant did not accurately report his wages for July 25, 2020. The claimant earned \$153.00 and received \$100.00 in vacation for that week. The claimant's gross earnings of \$153.00 is reduced by his allowance of \$94.00. The amount to be deducted is \$59.00. The claimant's weekly benefit amount of \$348.00 is reduced by \$59.00, which results in \$289.00 in benefits for that week. However, the claimant received \$100.00 in vacation for that week which is one hundred percent deductible. This results in the claimant being entitled to receive \$189.00 in benefits for that week.

The claimant accurately reported his total earnings as \$362.00 for the week ending August 1, 2020. However, the claimant did not report that \$100.00 of those earnings were due to vacation pay. The claimant's gross earnings of \$262.00 is reduced by his allowance of \$94.00. The amount to be deductible is \$168.00. The claimant's weekly benefit amount of \$348.00 is reduced by \$168.00, which results in \$180.00 in benefits for that week. However, the claimant's \$100.00 of vacation also must be completely deducted. This results in the claimant being entitled to receive \$80.00 in benefits for that week.

The claimant did not accurately report his wages for August 8, 2020. The claimant earned \$76.00 in wages and \$150.00 in vacation for that week. The claimant's gross earnings of \$76.00 is less than the allowance of \$94.00, so it is not reduced from the claim. The claimant's weekly benefit amount of \$348.00 is reduced by the \$150.00 he received in vacation, which results in him being eligible for \$198.00 in benefits for that week.

The claimant did not accurately report his wages for August 15, 2020. The claimant earned \$87.50 in wages and \$150.00 in vacation for that week. The claimant's gross earnings of \$87.50 is less than his allowance of \$94.00. However, the claimant's weekly benefit amount of \$348.00 is reduced by \$150.00, which results in him being eligible for \$198.00 in benefits for that week.

The claimant did not accurately report his wages for August 22, 2020. The claimant earned \$342.00 for that week. The claimant's gross earnings of \$342.00 is reduced by his allowance of \$94.00. The amount to be deducted is \$248.00. The claimant's weekly benefit amount of \$348.00 is reduced by \$248.00, which results in him being eligible for \$100.00 in benefits for that week.

The claimant did not accurately report his wages for August 29, 2020. The claimant earned \$312.50 for that week. The claimant's gross earnings of \$312.50 is reduced by his allowance of \$94.00. The amount to be deducted is \$218.50. The claimant's weekly benefit amount of \$348.00 is reduced by \$218.50, which results in him being eligible for \$129.50 in benefits for that week.

Iowa Code section 96.3(7)a-b, as amended in 2008, provides:

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. The employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. This prohibition against relief of charges shall apply to both contributory and reimbursable employers.

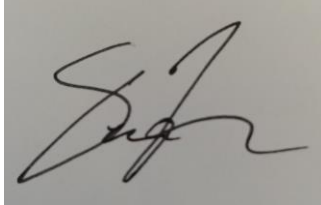
(b) However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal **regarding the issue of the individual's separation from employment.**

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Since the claimant is eligible for unemployment insurance benefits for each of the weeks he received LWA payments, the claimant has not been overpaid LWA benefits.

DECISION:

The March 11, 2022, (reference 04) unemployment insurance decision is reversed. The claimant has not been overpaid LWA benefits.

A handwritten signature in black ink, appearing to read 'S. Nelson', is written over a light gray rectangular background.

Sean M. Nelson
Administrative Law Judge

August 30, 2022
Decision Dated and Mailed

smn/lj

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. *There is no filing fee to file an appeal with the Employment Appeal Board.*

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 file a petition for judicial review in district court.

2. If you do not file 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 www.iowacourts.gov/efile. *There may be a filing fee to file the petition in District Court.*

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. *No hay tarifa de presentación para presentar una apelación ante la Junta de Apelación de Empleo.*

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 no presenta una apelación de la decisión del juez ante la Junta de Apelación de Empleo dentro de los quince (15) días, la decisión se convierte en una acción final de la agencia y tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días. Puede encontrar información adicional sobre cómo presentar una petición en www.iowacourts.gov/efile. *Puede haber una tarifa de presentación para presentar la petición en el Tribunal de Distrito.*

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.