

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

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**JUSTIN J THARP**  
Claimant

**BELL AUTOMOTIVE HOLDING LLC**  
Employer

**APPEAL 22A-UI-17943-DZ-T  
ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/31/20  
Claimant: Appellant (4)**

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

**STATEMENT OF THE CASE:**

Justin J. Tharp, the claimant/appellant, filed an appeal from the October 5, 2022 (reference 02) unemployment insurance (UI) decision. The decision concluded that Mr. Tharp was overpaid REGULAR (state) UI benefits in the gross amount of \$1,512.00 because he did not report wages earned with the employer. The parties were properly notified of the hearing. A telephone hearing was held on November 2, 2022. Appeals 22A-UI-17943-DZ-T, and 22A-UI-17944-DZ-T were heard together and formed one hearing record. Mr. Tharp participated personally. The employer did not participate in the hearing. The administrative law judge took official notice of the administrative record. Department's Exhibits 1 and 2 were admitted as evidence.

**ISSUES:**

Did Mr. Tharp correctly report wages earned?  
Has Mr. Tharp been overpaid REGULAR (state) UI benefits?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: Mr. Tharp began working for the employer in July 2020 as a full-time mechanic. The employer paid him \$14.00 - \$15.00 per hour. Mr. Tharp filed his UI claim because the employer reduced his hours due to the COVID-19 pandemic.

In relevant part, Mr. Tharp filed weekly UI claims for 13 weeks from June 28, 2020 through September 26, 2020. Each week Mr. Tharp would go to his boss' office, log into his own UI account, and watch as his boss completed Mr. Tharp's weekly UI claim. Mr. Tharp did this because he did not understand the UI process, he was not comfortable using computers, and he trusted his boss. Mr. Tharp did not review his claim before it was submitted. Mr. Tharp suspects, but does not know, that the employer reported his net weekly wages and not his gross weekly wages.

Mr. Tharp reported gross wages of as follows:

- \$340.00 for the week of June 28 through July 4,
- \$340.00 for the week of July 5-11,
- \$318.00 for the week of July 12-18,
- \$318.00 for the week of July 19-25,
- \$0.00 for the week July 26 through August 1,
- \$333.00 for the week of August 2-8,
- \$0.00 for the week of August 9-15,
- \$281.00 for the week of August 16-22,
- \$341.00 for the week of August 23-29,
- \$207.00 for the week of August 30 through September 5,
- \$305.00 for the week of September 6-12,
- \$150.00 for the week of September 13-19, and
- \$330.00 for the week of September 20-26.

IWD set Mr. Tharp's weekly UI benefit amount at \$330.00. Based on the wages he reported, IWD paid Mr. Tharp REGULAR (state) UI benefits in the weekly gross amount as follows:

- \$72.00 for the week of June 28 through July 4,
- \$72.00 for the week of July 5-11,
- \$94.00 for the week of July 12-18,
- \$94.00 for the week of July 19-25,
- \$330.00 for the week July 26 through August 1,
- \$79.00 for the week of August 2-8,
- \$330.00 for the week of August 9-15,
- \$131.00 for the week of August 16-22,
- \$71.00 for the week of August 23-29,
- \$205.00 for the week of August 30 through September 5,
- \$107.00 for the week of September 6-12,
- \$262.00 for the week of September 13-19, and
- \$82.00 for the week of September 20-26.

IWD sent Mr. Tharp REGULAR (state) UI benefits because IWD had made a policy decision, given the global COVID-19 pandemic, to send claimants who filed an initial UI claim and weekly UI claims REGULAR (state) UI benefits even if IWD had not yet decided if claimants were eligible for benefits.

IWD conducted an audit of Mr. Tharp's wages in January 2021. On January 13, 2021, IWD asked the employer to report Mr. Tharp's weekly gross wages for the 13 weeks from June 28, 2020 through September 26, 2020. On February 3, 2021, the employer reported to IWD that Mr. Tharp had earned gross weekly wages, holiday pay, or vacation pay as follows:

- \$448.00 plus \$112.00 in holiday pay for the week of June 28 through July 4,
- \$378.00 for the week of July 5-11,
- \$385.00 for the week of July 12-18,
- \$381.50 for the week of July 19-25,
- \$598.50 in vacation pay for the week July 26 through August 1,
- \$409.50 for the week of August 2-8,
- \$175.00 for the week of August 9-15,
- \$339.50 for the week of August 16-22,
- \$420.00 for the week of August 23-29,

- \$465.50 for the week of August 30 through September 5,
- \$119.00 for the week of September 6-12,
- \$441.00 for the week of September 13-19, and
- \$423.50 for the week of September 20-26.

IWD accepted the employer's numbers as accurate and concluded that Mr. Tharp was entitled to weekly UI benefits as follows:

- \$0.00 for the 6 weeks from June 28 through August 8,
- \$237.00 for the week of August 9-15,
- \$73.00 for the week of August 16-22,
- \$0.00 for the 2 weeks from August 23 through September 5, and
- \$0.00 for the 2 weeks from September 13 through September 26.

IWD did not include information about the week of September 6-12 in its overpayment calculation.

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

For the reasons that follow, the administrative law judge concludes: Mr. Tharp has been overpaid REGULAR (state) UI benefits.

Iowa Code section 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.

Iowa Code section 96.5(5) provides:

Causes for disqualification. 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. 871-24.18 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.

Mr. Tharp is responsible for his own UI claim. Mr. Tharp logging in and letting any other person complete and submit his weekly UI claim does not relieve Mr. Tharp of this responsibility. Mr. Tharp incorrectly reported his wages for 12 weeks from June 28, 2020 through September 26, 2020. Based on his correct wages, Mr. Tharp was entitled to REGULAR (state) UI benefits in the gross amount of \$603.00 for those 12 weeks, or:

- \$237.00 for the week of August 9-15,
- \$73.00 for the week of August 16-22, and
- \$0.00 for the 2 weeks from August 23 through September 5,
- \$293.00 for the week of September 6-12, and
- \$0.00 for the 2 weeks from September 13 through September 26.

For the week of September 6-12, the week IWD did not include any calculation for, Mr. Tharp is entitled to \$293.00 in REGULAR (state) UI benefits because he reported too much wages that week. That week Mr. Tharp reported that he earned \$305.00, but the employer reported that he earned only \$119.00 that week. Since Mr. Tharp reported too much wages for that week, IWD underpaid him REGULAR (state) UI benefits for that week. IWD paid Mr. Tharp \$107.00 for that week, but he was entitled to \$293.00 for that week. IWD underpaid Mr. Tharp \$186.00 (\$293.00 – \$107.00). This underpayment reduces Mr. Tharp's overpayment total.

For the 12 weeks from June 28, 2020 through September 26, 2020, Mr. Tharp received REGULAR (state) UI benefits in the total gross amount of \$1,929.00 (see Findings of Fact for break out by week). Since Mr. Tharp incorrectly reported his wages for 12 weeks from June 28, 2020 and September 26, 2020 and received REGULAR (state) UI benefits in the total gross amount of \$1,929.00, but he was entitled to \$603.00 in benefits, he has been overpaid REGULAR (state) benefits in the gross amount of \$1,326.00 (\$1,929.00 - \$603.00).

**DECISION:**

The October 5, 2022 (reference 02) UI decision is MODIFIED IN FAVOR OF THE APPELLANT, Mr. Tharp. Mr. Tharp has been overpaid REGULAR (state) UI benefits in the gross amount of \$1,326.00, which must be repaid.



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Daniel Zeno  
Administrative Law Judge

November 9, 2022  
Decision Dated and Mailed

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**APPEAL RIGHTS.** If you disagree with this 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 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.