

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

SARA HUDDLESTON

Claimant

APPEAL 22A-UI-18397-B2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HAMILTON LAW FIRM PC

Employer

OC: 04/05/20

Claimant: Appellant (5)

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

Iowa Code § 96.5(5) – Wages

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 24, 2022, (reference 01) unemployment insurance decision that concluded claimant was overpaid a net amount of \$577.00 in regular unemployment insurance benefits. After proper notice, a telephone hearing was conducted on November 17, 2022. The hearing was held together with Appeals 22A-UI-18398-B2-T. The claimant participated. Employer participated with witnesses Mary Hamilton and Lori Nitchals. Official notice of the administrative records was taken.

ISSUES:

Is claimant overpaid benefits?

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?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant established a claim for unemployment insurance benefits with an effective date of April 5, 2020. Claimant's weekly benefit amount (WBA) was \$500.00.

Claimant began employment for this employer on September 5, 2017. Claimant is employed as a full-time legal assistant earning \$16.50 per hour at the time in question.

Claimant filed weekly continued claims for the period of April 5, 2020 and August 22, 2020. During this period, claimant was partially unemployed.

IWD conducted an audit of the claim, and contacted the employer to verify the claimant's wages earned with employer, Hamilton Law Firm. A review of the administrative file reflects the claimant did not report the same wages at the employer.

Because the claimant did not accurately report her wages during this same period, a net overpayment of \$577.00 was determined by IWD. Claimant did dispute wages reported by employer.

Employer gave testimony that employer erred when filling out the Request for Wage Record Documents. Employer's information erroneously stated wages when they were delivered to claimant, not when they were earned. This created a discrepancy between the wages claimant stated and the wages employer stated and in many cases these wages were a week off and resulted in times when claimant was seen not eligible for benefits when in fact she was eligible.

Additionally, for some reason, claimant admitted that she stopped reporting her gross wages on or around May 23, 2020 and started only reporting her net wages. This resulted in the next few months with claimant receiving overpayments most every week.

The agency established the overpayment based upon the following wages and payments made to the claimant: (See fact-finding documents)

WEEK ENDING	WAGES REPORTED	WAGES EARNED	BENEFITS PAID	BENEFITS ENTITLED	OVERPAYMENT
4-11	752	814	0	0	
4-18	660	752	0	0	
4-25	371	660	254	0	254
5-2	371	371	254	254	
5-9	387	371	238	254	-16
5-16	305	387	320	238	82
5-23	3052	305	0	320	-320
5-30	444	387	181	238	-57
6-6	420	536	205	0	205
6-13	406	420	219	205	14
6-20	374	486	251	139	112
6-27	368	445	257	180	77
7-4	368	437	257	188	69
7-11	355	437	270	188	82
7-18	362	420	263	205	58
7-25	368	429	257	196	61
8-1	387	437	238	188	50
8-8	368	462	257	163	94
8-15	548	437	0	188	-188.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows

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 Code § 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. *This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c".* The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3, are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

(emphasis added).

Iowa Code § 96.19(38)b provides:

As used in this chapter, unless the context clearly requires otherwise:

38. "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.

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 deductions 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.

Iowa Admin. Code r. 871-23.3(1) provides:

(1) "Wages" means all remuneration for personal services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. Wages also means wages in lieu of notice, separation allowance, severance pay, or dismissal pay. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rule 23.2(96).

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.

The credible evidence in this case is that there have been miscalculations done on both the part of the employer and on the part of the claimant, and these miscalculations have led to miscalculations also on the part of the overpayments said to have been made to the claimant. Initially, the claimant's first week of reporting wages is correct, while the employer stated that every week of reporting is off by one week. Therefore, employer's April 11 week should state wages to be \$752.00, rather than the \$814.00 listed in Request for Wage Records completed on October 20, 2022. The reporting being off a week continued throughout each week until August 22, 2020.

At the same time, claimant initially was correctly reporting her wages earned. The correct reporting of her wages earned continued from the week ending April 11, 2020 through the week ending May 16, 2020. After that week, for some reason claimant started reporting net wages earned instead of gross wages earned.

Using this information, in order for the administrative law judge to correctly calculate claimant's benefits, the calculations should rely on claimant's figures from the week ending April 11, 2020 through the week ending May 16, 2020. From that point forward, the calculation is based on the report of the employer's figures once they have been pulled back a week (i.e. the \$672.00 figure reported for the week ending August 22, 2020 is being applied to the actual week earned which is the week ending August 15, 2020.) .

For the week ending April 25, 2020, claimant was not overpaid \$254.00 as this overpaid arose from employer's misstatement of wages for that week.

For the week ending May 9, 2020, claimant was not underpaid \$16.00 as this underpayment arose from employer's misstatement of wages for that week.

For the week ending May 16, 2020, claimant was not overpaid \$82.00 as this overpaid arose from employer's misstatement of wages for that week.

For the week ending May 23, 2020, claimant was correctly underpaid \$320.00 as this underpayment arose from a combination of a misprint of claimant's wages and employer's misstatement of wages for that week.

For the week ending May 30, 2020, claimant was not underpaid \$57.00 as claimant earned too much money to receive unemployment benefits this week having earned a gross amount of \$536.00 for that week.

For the week ending June 6, 2020, claimant earned \$420.00. She was correctly paid \$205.00 in unemployment benefits and not overpaid that amount.

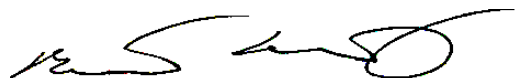
For the weeks between the week ending June 13, 2020 and the week ending August 15, 2020 the calculations used to determine benefits were a week off as to the employers report of wages. Additionally claimant's report of wages were not correct as they admittedly were for net wages and not gross wages. A new table has been created, showing the weeks reported, wages earned (for the correct week as reported by employer), benefits paid, benefits entitled, and overpayments.

WEEK ENDING	WAGES REPORTED	WAGES EARNED	BENEFITS PAID	BENEFITS ENTITLED	OVERPAYMENT
4-11		752		0	
4-18		660		0	
4-25		371	254	254	
5-2		371	254	254	
5-9		387	238	238	
5-16		305	320	320	
5-23		387	0	238	-238
5-30		536	181	0	181
6-6		420	205	205	0
6-13		486	219	139	80
6-20		445	251	180	71
6-27		437	257	188	69
7-4		437	257	188	69
7-11		420	270	205	65
7-18		429	263	196	67
7-25		437	257	188	69
8-1		462	238	163	75
8-8		437	257	188	69
8-15		672	0	0	0

Based upon the recalculation of wages earned, the claimant was overpaid benefits in the amount of \$577.00, to which claimant was not entitled. The administrative law judge concludes therefore, that the overpayment was correctly calculated although the way that the numbers were achieved was through information given for incorrect weeks. The incorrect calculation did not occur through any fault on the part on the benefits bureau of IWD; rather it occurred as a result of incorrect information provided by both the claimant and the employer in this matter.

DECISION:

The October 24, 2022 (reference 01) is modified with no change in effect. The claimant was overpaid \$577.00 in regular unemployment insurance benefits, which must be repaid.



Blair Bennett | Administrative Law Judge II
Iowa Department of Inspections & Appeals

November 22, 2022
Decision Dated and Mailed

bab/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. *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.