

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

DOROTHY M HALL
Claimant

MAURITI ONE HOSPITALITY LLC
Employer

APPEAL 22A-UI-11343-SN-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/21/21
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant, Dorothy M. Hall, filed a timely appeal from the April 25, 2022, (reference 01) unemployment insurance decision that found she had been overpaid \$372.00 in regular unemployment insurance benefits from the week ending March 21, 2021 to the week ending June 19, 2021. After due notice was issued, a telephone conference hearing was set for July 5, 2022. The claimant participated. The employer participated through Manager Sonuben Chaudhari. The hearing was held jointly with 22A-UI-11344-SN-T. The administrative law judge took official notice of the agency records, including documents generated at factfinding.

ISSUES:

Whether the claimant inaccurately reported wages from March 21, 2021 to the week ending June 19, 2021?

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 21, 2021. Her weekly benefit amount on her 2021 claim year was \$178.00.

On October 13, 2021, Iowa Workforce Development Department requested wage records from March 28, 2020 through July 3, 2020. Accountant Anamika Onota provided information for these dates using the faulty logic of only reporting the amount the claimant was paid rather than what she was earned. This is demonstrated by the use of drawing brackets next to each two week period to suggest the pay relates back to the previous week and that week. Manager Sonuben Chaudhari was not able to provide any information regarding the issues presented at the hearing because the employer no longer had access to its own pay records.

	Earnings	Request of Wage Records Report	Employer Testimony at Hearing	Benefits Paid
04/03/20	\$172.00	\$389.15	N/A	\$50.00
04/10/20	\$134.00		N/A	\$88.00
04/17/20	\$144.00	\$296.16	N/A	\$78.00
04/24/20	\$157.00		N/A	\$65.00
05/01/20	\$161.00	\$355.29	N/A	\$61.00
05/08/20	\$172.00		N/A	\$50.00
05/15/20	\$161.00	\$369.37	N/A	\$61.00
05/22/20	\$172.00		N/A	\$50.00
05/29/20	\$150.00	\$356.47	N/A	\$72.00
06/05/20	\$170.00		N/A	\$52.00
06/12/20	\$177.00	\$500.30	N/A	\$45.00
06/19/20	\$180.00		N/A	\$42.00
06/26/20	\$195.00	\$430.97	N/A	\$00.00
07/03/20	\$193.00		N/A	\$00.00

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant has not been overpaid regular unemployment insurance 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 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 the claimant more credible than that of the employer's response to wage records.

While both parties appeared to be laboring under erroneous interpretations of what is supposed to be reported, the claimant's reporting was more accurate. The employer appears to have reported the claimant's net pay for the entire pay period and the representative took that to mean that is what the claimant earned that week. There is nothing in the record to support that conclusion. In contrast, the claimant came prepared with records and competent testimony regarding what she earned each week. As a result, the claimant's testimony and the earnings she reported when she made her weekly claims will be accepted as the findings of fact for each week.

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.

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

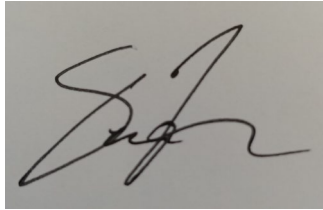
7. Recovery of overpayment of benefits.

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.

	Earnings	Benefits Paid
04/03/20	\$172.00	\$50.00
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06/26/20	\$195.00	\$00.00
07/03/20	\$193.00	\$00.00

DECISION:

The April 25, 2022, (reference 01) unemployment insurance decision reversed. The claimant was entitled to the benefits she originally received. The audit was based on erroneous information obtained from the employer.



Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

September 15, 2022
Decision Dated and Mailed

smn/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.