

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

RHONDA J CONNELL
Claimant

APPEAL 22A-UI-12820-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARQUETTE HOTEL GROUP
Employer

**OC: 03/15/20
Claimant: Appellant (4)**

Iowa Code § 96.3(7) - Recovery of Benefit Overpayment
Iowa Code § 96.19(38) - Total, Partial and Temporary Unemployment
Iowa Code § 96.5(5) - Payment - Other Compensation
Iowa Admin. Code r. 871-24.18 - Wage-Earnings Limitation

STATEMENT OF THE CASE:

Ms. Rhonda Connell, claimant/appellant, appealed the May 11, 2022, (reference 02) unemployment insurance decision finding claimant was overpaid a net amount of \$1,714.00 in regular unemployment benefits for between 03/15/20 and 03/06/21, due to incorrectly or failing to report wages earned with employer. Notices of hearing were mailed to the parties last known addresses of record for a telephone hearing originally scheduled for July 11, 2022, at 9:05AM. Claimant personally participated. Employer, Marquette Hotel Group, participated through Ada Waterman, general manager. The following hearings were held together as part of a consolidated hearing, Appeals: 22A-UI-12819-DH-T; 22A-UI-12820-DH-T; and 22A-UI-12825-DH-T. Judicial notice was taken of the administrative record (including employer's wage reports on claimant and the IWD Representative's worksheets), DBIN, and KPYX.

ISSUES:

Was claimant overpaid benefits?
Was claimant totally, partially, or temporarily unemployed?
Did claimant correctly report wages earned?
Is the claimant eligible for benefits based upon wages earned?

FINDINGS OF FACT:

Having heard the testimony and reviewed the evidence in the record, the undersigned finds:

The below table shows the benefit week ending for the wages reported by claimant and by employer that was addressed by the Iowa Workforce Development (IWD) representative and the IWD representative's findings for wages reported and net overpayments

Benefit Week Ending	Wages Reported		Unemployment Benefits		Underpaid	Overpaid
	By Claimant	As found by IWD Rep. as to ER	Paid	Entitled per IWD Rep.	Per IWD Rep.	Per IWD Rep.
03/21//20	\$160.00	\$274.00	\$183.00	\$69.00		\$114.00
03/28/20	\$85.00	\$302.00	\$258.00	\$0.00		\$258.00
04/04/20	\$85.00	\$207.00	\$258.00	\$136.00		\$122.00
04/11/20	\$85.00	\$102.00	\$258.00	241.00		\$17.00
04/18/20	\$85.00	\$491.00	\$258.00	\$0.00		\$258.00
04/25/20	\$85.00	\$116.00	\$258.00	\$227.00		\$31.00
05/02/20	\$120.00	\$320.00	\$223.00	\$0.00		\$223.00
05/09/20	\$73.00	\$105.00	\$270.00	\$238.00		\$32.00
05/16/20	\$135.00	\$285.00	\$208.00	\$58.00		\$150.00
05/23/20	\$185.00	\$326.00	\$158.00	\$0.00		\$158.00
05/30/20	\$210.00	\$481.00	\$133.00	\$0.00		\$133.00
06/06/20	\$211.00	\$641.00	\$132.00	\$0.00		\$132.00
06/13/20	\$450.00	\$401.00	\$0.00	\$0.00		
06/20/20	\$420.00	\$663.00	\$0.00	\$0.00		
06/27/20	\$504.00	\$776.00	\$0.00	\$0.00		
07/04/20	\$551.00	\$1068.00	\$0.00	\$0.00		
01/09/21	\$198.00	\$197.00	\$145.00	\$146.00	\$1.00	
01/16/21	\$169.00	\$0.00	\$174.00	\$275.00	\$101.00	
01/23/21	\$221.00	\$186.00	\$122.00	\$157.00	\$35.00	
01/30/21	\$111.00	\$253.00	\$232.00	\$90.00		\$142.00
02/06/21	\$155.00	\$162.00	\$188.00	\$181.00		\$7.00
02/13/21	\$151.00	\$215.00	\$192.00	\$128.00		\$64.00
02/20/21	\$159.00	\$271.00	\$184.00	\$72.00		\$112.00
02/27/21	\$260.00	\$155.00	\$83.00	\$188.00	\$105.00	
03/06/21	\$254.00	\$257.00	\$89.00	\$86.00		\$3.00
03/13/21	\$236.00	\$236.00	\$107.00	\$107.00		
				Sub Total	\$242.00	\$1956.00
				Net Total		\$1714.00

During the hearing, the wage reports were gone over with the parties. The employer agrees that the wage report that was provided by the employer is accurate. Claimant agrees with the wages as reported by employer and advises that the reason her numbers were off when they were is the employers pay week ended differently than the reporting week to IWD and she would need to give her best guess as to what she would gross.

The undersigned finds that the above findings of the IWD Representative for wages as reported by claimant are correct. Furthermore, the wages found by IWD Representative as reported by the employer are found to be correct with the exception of the following benefit weeks ending, with the corrected amount reported as following: 03/28/20, \$112.00; 04/04/20, \$105.00; 04/18/20, \$91.00; 05/02/20, \$225.00; 05/16/20, \$190.00; 05/23/20, \$229.00; 05/30/20, \$375.00; 06/06/20, \$440.00; 06/20/20, \$444.00; 06/27/20, \$384.00; and 07/04/20, \$602.00.

Claimant was the full-time head housekeeper for employer. Her start date was 02/14/16. At the time of hearing, claimant was still employed by employer. When COVID-19 (a world-wide

pandemic) struck, employer furloughed most housekeepers. Claimant was the only one kept on with any regularity and her hours became more dependent upon how many rooms had been occupied, which greatly reduced her normal work hours due to COVID-19.

Claimant filed a claim for unemployment insurance benefits with an original claim date of 03/15/20 due to reduced work hours. Her weekly benefit amount (WBA) was \$275.00. Claimant submitted weekly claims for benefit weeks ending between 03/15/20 and 03/06/21. Claimant, by not reporting her wages correctly, was overpaid in regular unemployment benefits.

REASONING AND CONCLUSIONS OF LAW:

An issue in this case is whether the claimant failed to report wages. It is found that claimant failed to accurately report wages as addressed in the findings of fact.

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.

The above table shows claimant incorrectly reported her wages received versus what employer reported as her wages were.

The next issues in this case are whether the claimant is totally, partially, or temporarily unemployed and whether claimant was eligible for benefits/overpaid benefits which are to be repaid. For the reasons set forth below, it is found claimant was overpaid a net total amount of \$802.00 in regular unemployment benefits that are to be repaid.

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 § 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.

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.

This rule is intended to implement Iowa Code § 96.3, 96.4 and 96.19(38).

The above administrative code's formula works out to be WBA times 0.25 equals X. The amount actually earned minus X equals Y. WBA minus Y equals the new adjusted weekly benefit amount to be paid for that week where a claimant otherwise qualifies for benefits, keeping in mind the rounding down found in the rule.

By definition, claimant was not totally, partially, or temporarily unemployed and therefore disqualified from benefits for the weeks ending 05/30/20 through the week ending 07/04/20, which is six weeks. This is due to her earning more than her WBA plus \$15.00, even though she got less than her normal hours. For the week ending 01/16/21, claimant was temporarily unemployed as she was still employed but had no hours due to lack of work.

Benefit Week Ending	Wages Reported		Unemployment Benefits		Underpaid	Overpaid
	By Claimant	What ER Reported	Paid	Entitled per ALJ	Per ALJ	Per ALJ
03/21/20	\$160.00	\$274.00	\$183.00	\$69.00		\$114.00
03/28/20	\$85.00	\$112.00	\$258.00	\$231.00		\$27.00
04/04/20	\$85.00	\$105.00	\$258.00	\$238.00		\$20.00
04/11/20	\$85.00	\$102.00	\$258.00	\$241.00		\$17.00
04/18/20	\$85.00	\$91.00	\$258.00	\$252.00		\$6.00
04/25/20	\$85.00	\$116.00	\$258.00	\$227.00		\$31.00
05/02/20	\$120.00	\$225.00	\$223.00	\$118.00		\$105.00
05/09/20	\$73.00	\$105.00	\$270.00	\$238.00		\$32.00
05/16/20	\$135.00	\$190.00	\$208.00	\$153.00		\$55.00
05/23/20	\$185.00	\$229.00	\$158.00	\$114.00		\$44.00
05/30/20	\$210.00	\$375.00	\$133.00	\$0.00		\$133.00
06/06/20	\$211.00	\$440.00	\$132.00	\$0.00		
06/13/20	\$450.00	\$401.00	\$0.00	\$0.00		
06/20/20	\$420.00	\$444.00	\$0.00	\$0.00		
06/27/20	\$504.00	\$384.00	\$0.00	\$0.00		
07/04/20	\$551.00	\$602.00	\$0.00	\$0.00		
01/09/21	\$198.00	\$197.00	\$145.00	\$146.00	\$1.00	
01/16/21	\$169.00	\$0.00	\$174.00	\$275.00	\$101.00	
01/23/21	\$221.00	\$186.00	\$122.00	\$157.00	\$35.00	
01/30/21	\$111.00	\$253.00	\$232.00	\$90.00		\$142.00
02/06/21	\$155.00	\$162.00	\$188.00	\$181.00		\$7.00
02/13/21	\$151.00	\$215.00	\$192.00	\$128.00		\$64.00
02/20/21	\$159.00	\$271.00	\$184.00	\$72.00		\$112.00
02/27/21	\$260.00	\$155.00	\$83.00	\$188.00	\$105.00	
03/06/21	\$254.00	\$257.00	\$89.00	\$86.00		\$3.00
03/13/21	\$236.00	\$236.00	\$107.00	\$107.00		
				Sub Total	\$242.00	\$1044.00
				Net Total		\$802.00

As addressed above, claimant was underpaid \$242.00 in regular unemployment benefits and was overpaid \$1044.00 in regular unemployment benefits, resulting in a net overpayment of \$802.00 in regular unemployment benefits that has to be repaid.

DECISION:

The May 11, 2022, (reference 02) unemployment insurance decision finding claimant was overpaid a net amount of \$1,714.00 in regular unemployment benefits for between 03/15/20 and 03/06/21, due to incorrectly or failing to report wages earned with employer is **MODIFIED** in favor of appellant, finding the net overpayment amount is \$802.00 Claimant was overpaid a net amount of \$802.00 regular unemployment benefits which is to be repaid.



Darrin T. Hamilton
Administrative Law Judge

November 3, 2022
Decision Dated and Mailed

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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 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.