

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

DARRICK D HICKS
Claimant

APPEAL 22A-UI-15076-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 01/09/22
Claimant: Appellant (4)**

Iowa Code § 96.3(7) – Overpayment
Iowa Admin. Code r. 871-26.14(7) – Decision on the Record

STATEMENT OF THE CASE:

On July 14, 2022, Darrick Hicks (claimant) filed a timely appeal from a disqualification decision that the Appeals Bureau treated as also a timely appeal from the July 18, 2022 (reference 07) decision that held the claimant was overpaid \$1,380.00 in benefits for three weeks between January 9, 2022 and June 25, 2022, due to the decision that disqualified the claimant for benefits in connection with a discharge from employment with American Baptist Homes of the Midwest. A notice of hearing was mailed to the claimant's last-known address of record for a telephone hearing scheduled for 10:05 a.m. on August 22, 2022. The claimant did not comply with the hearing notice instructions to call the toll-free number at the time of the hearing and did not participate in the appeal hearing. The hearing in this matter was consolidated with the hearing in Appeal Number 22A-UI-15075-JT-T. Based upon the claimant/appellant's failure to participate in the hearing, IWD administrative records, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law and decision.

ISSUE:

Whether the claimant was overpaid \$1,380.00 in benefits for three weeks between January 9, 2022 and June 25, 2022, due to the decision that disqualified the claimant for benefits in connection with a discharge from employment with American Baptist Homes of the Midwest.

FINDINGS OF FACT:

Darrick Hicks (claimant) established an original claim for benefits that was effective January 9, 2022 and an "additional claim" that was effect June 12, 2022. Iowa Workforce Development set the weekly benefit amount at \$460.00. Early in the claim, the claimant received \$460.00 in weekly benefits for the week ending January 15 and the week ending January 22, 2022. In connection with the June 12, 2022 "additional claim," the claimant received \$460.00 in benefits for the week ending June 25, 2022.

On July 8, 2022, Iowa Workforce Development Benefits Bureau issued a reference 06 decision that disqualified the claimant for benefits, based on the deputy's conclusion the claimant was discharged from employment with American Baptist Homes of the Midwest on June 10, 2022 for

violation of a known company rule. The claimant's June 12, 2022 "additional claim" was in response to the June 10, 2022 discharge. The only benefits the claimant received subsequent to the discharge were the \$460.00 paid for the week ending June 25, 2022. The reference 06 disqualification decision prompted the overpayment decision on appeal in the present matter. In response to the claimant's failure to appear for the August 22, 2022 consolidated appeal hearing, the administrative law judge dismissed the claimant's appeal in Appeal Number 22A-UI-15075-JT-T and left the July 8, 2022 (reference 06) disqualification decision in place.

REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedure Act at Iowa Code § 17A.12(3) provides that if a party fails to appear or participate in a hearing after proper service of notice, the judge may enter a default decision or proceed with the hearing and make a decision in the absence of the party.

Iowa Admin. Code r. 871-26.14(7) provides:

(7) If a party has not responded to a notice of telephone hearing by providing the appeals bureau with the names and telephone numbers of the persons who are participating in the hearing by the scheduled starting time of the hearing or is not available at the telephone number provided, the presiding officer may proceed with the hearing. If the appealing party fails to provide a telephone number or is unavailable for the hearing, the presiding officer may decide the appealing party is in default and dismiss the appeal as provided in Iowa Code section 17A.12(3). The record may be reopened if the absent party makes a request to reopen the hearing in writing under subrule 26.8(3) and shows good cause for reopening the hearing.

The claimant/appellant did not call the toll-free number listed on the hearing notice at the time of the hearing.

Because the July 19, 2022 is obviously in error regarding the number of weeks involved in the overpayment and the amount of the overpayment, the administrative law judge deems a decision based on the agency record, rather than a default decision, to be the appropriate approach in this matter.

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 July 8, 2022 (reference 06) decision disqualified the claimant for benefits based on the June 10, 2022 discharge. The reference 06 decision remains in effect. The only benefits paid subsequent to the discharge were the \$460.00 paid for the week ending June 25, 2022. The reference 06 decision did not disqualify the claimant for benefits for the period prior to the June 10, 2022 discharge and cannot serve as a basis for an overpayment decision regarding

the weeks ending January 15 and 22, 2022. The claimant was overpaid \$460.00 for the week ending June 25, 2022 and must repay the benefits paid for that week.

DECISION:

The July 18, 2022 (reference 07) decision is MODIFIED in favor of the claimant as follows. The claimant was overpaid \$460.00 in benefits for the week ending June 25, 2022, based on the July 8, 2022 (reference 06) decision that disqualified the claimant for benefits in connection with a June 10, 2022 discharge. The reference 06 decision did not disqualify the claimant for benefits for the period prior to the June 10, 2022 discharge and cannot serve as a basis for an overpayment decision regarding the weeks ending January 15 and 22, 2022. Accordingly, there is no overpayment for the weeks ending January 15 and 22, 2022. The claimant must repay the \$460.00 in benefits he received for the week ending June 25, 2022.



James E. Timberland
Administrative Law Judge

September 30, 2022
Decision Dated and Mailed

jet/kmj

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>.

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 adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

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.