

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

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**CALLIE N HENRY**  
Claimant

**EARLHAM COMMUNITY SCHOOL DIST**  
Employer

**APPEAL 22A-UI-10179-DZ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/17/20**  
**Claimant: Appellant (1)**

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Code § 96.19(38) – Total, Partial, Temporary Unemployment  
Iowa Code § 96.5(5) – Other Compensation

**STATEMENT OF THE CASE:**

Callie N Henry, the claimant/appellant, filed an appeal from the April 12, 2022, (reference 02) unemployment insurance (UI) decision that concluded she was overpaid REGULAR (state) UI benefits in the gross amount of \$2,261.00 because she did not report wages earned with the employer for seven weeks. The parties were properly notified about the hearing. A telephone hearing was held on June 6, 2022. Ms. Henry participated personally. The employer participated through Jodi Stroud, business manager. The administrative law judge took official notice of the administrative record. Department's Exhibit 1 was admitted as evidence.

**ISSUES:**

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

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Henry began working for the employer in 2015. She works as a paraeducator, and junior and high school softball coach. Ms. Henry also works part-time for another employer, Childserve.

Due to the COVID-19 pandemic, the employer closed in March 2020 and remained closed until the end of the school year on May 28. However, the employer its employees, including Ms. Henry as if they were working. Childserve also closed due to the pandemic. Ms. Henry was unsure if the softball season would happen because of the pandemic.

In late May/early June, the employer sent Ms. Henry a coaching contract for the softball season. The contract provided that Ms. Henry would coach, and the employer would pay her \$695.14 on the fifth and fourteenth day of each the months of June and July. Ms. Henry signed the contract. On, or about June 5, Ms. Henry called Iowa Workforce Development (IWD) to ask about how she should report her coaching wages on her UI claim. The IWD representative inaccurately told Ms. Henry to report her wages when she was paid the wages even though IWD rules require claimant to report wages when they are earned.

In relevant part, Ms. Henry filed weekly claims for 7 weeks from May 17, 2020 through July 4, 2020. Ms. Henry reported earning weekly wages of \$0.00 for the weeks of May 17-23, May 24-30, May 31 through June 6, June 14-20, and June 28 through July 4. Ms. Henry reported earning weekly wages of \$35.00 for the week of June 7-13, and she reported earning weekly wages of \$20.00 for the week of June 21-27. Based on the wages she reported, IWD paid Ms. Henry REGULAR (state) UI benefits in the gross amount of \$323.00 for each of the seven weeks for a total of \$2,261.00 (\$323.00 x 7)

IWD conducted an audit of Ms. Henry's wages in October 2020 and asked the employer to report her weekly gross wages to IWD. The employer reported Ms. Henry's weekly gross wages to IWD in October 2020. The employer reported that Ms. Henry earned wages from her paraeducator job and coaching job in the gross amount of \$378.00 for the week of May 17-23, \$340.20 for the week of May 24-30, \$1,235.80 for the week of May 31 through June 6, \$617.90 for the week of June 7-13, \$617.90 for the week of June 14-20, \$347.57 for the week of June 21-27, and \$347.57 for the week of June 28 through July 4. Ms. Henry agrees with the employer's reported wages.

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

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

Iowa Code section 96.5(5) provides, in pertinent part:

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) 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.

Ms. Henry incorrectly reported her wages for the 7 weeks from May 17, 2020 through July 4, 2020, in part, because of inaccurate information from an IWD representative. Based on her correct wages, Ms. Henry was entitled to REGULAR (state) UI benefits in the gross amount of \$0.00 for all seven weeks. For the seven weeks, Ms. Henry received REGULAR (state) UI benefits in the total gross amount of \$2,261.00 (\$323.00 X 7).

Since Ms. Henry incorrectly reported her wages for 7 weeks and received REGULAR (state) UI benefits in the total gross amount of \$2,261.00 for those weeks, but she was entitled to \$0.00 in benefits for those weeks, she has been overpaid REGULAR (state) benefits in the gross amount of \$2,261.00 (\$2,261.00 - \$0.00).

**DECISION:**

The April 12, 2022, (reference 02) UI decision is AFFIRMED. Ms. Henry has been overpaid REGULAR (state) UI benefits in the gross amount of \$2,261.00, which must be repaid.



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Daniel Zeno  
Administrative Law Judge  
Iowa Workforce Development  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax 515-478-3528

August 9, 2022

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Decision Dated and Mailed

dz/ac

**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  
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**

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.