

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

ARNOLD L SCHARES
Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT
INTEGRITY BUREAU**

APPEAL 23A-UI-03667-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/24/22
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Arnold L. Schares, the claimant/appellant,¹ filed an appeal from the April 5, 2023 (reference 03) unemployment insurance (UI) decision. The decision concluded that IWD overpaid Mr. Schares REGULAR (state) UI benefits in the total gross amount of \$531.00 for the week of March 5-11, 2023 because IWD concluded he incorrectly reported wages earned with employer Deere & Company. The Iowa Department of Inspections and Appeals UI Appeals Bureau mailed notices of appeal hearing to Mr. Schares and IWD. The undersigned administrative law judge held a telephone hearing on April 24, 2023. Mr. Schares participated personally. IWD did not participate in the hearing. The undersigned took official notice of the administrative record.

ISSUES:

Did Mr. Schares correctly report wages earned for the week of March 5-11, 2023?
Did IWD overpay Mr. Schares REGULAR (state) UI benefits for this week?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Mr. Schares began working for the employer in 1998. He works as a full-time assembler. The employer pays him a base pay rate of \$25.00 - \$27.00 per hour plus incentive pay based on his other employees' performance. The employer pays him vacation pay at a rate of \$34.00 per hour.

Mr. Schares filed his UI claim effective April 24, 2022. IWD set his weekly UI benefit amount as \$531.00. Mr. Schares filed an additional UI claim within the same benefit year effective February 26, 2023. Mr. Schares filed his additional claim because the employer laid him off as of Thursday, March 2, 2023. February 26 is the Sunday of the week of February 26 through March 4. On Friday, March 10, the employer paid Mr. Schares wages and vacation pay for the week of February 26 through March 4.

On Monday, March 13, Mr. Schares filed his weekly UI claim for the week of March 5-11. At that time, the employer had not paid Mr. Schares for this week, and he assumed that the employer would not pay him for this week, so he had reported \$0.00 for this week. Based on

¹ Claimant is the person who filed the UI claim with IWD. Appellant is the person or employer who filed the appeal.

the wages he reported, IWD paid Mr. Schares REGULAR (state) UI benefits in the total gross amount of \$531.00 for the week of March 5-11.

On Thursday, March 16, the employer paid Mr. Schares vacation pay for the week of March 5-11. Mr. Schares called IWD, reported that the employer had paid him for the week of March 5-11 and asked what he should do. The IWD representative told Mr. Schares he could file his weekly UI claim and he did not need to report the pay the employer sent him for the week of March 5-11. The employer did not pay Mr. Schares for the week of March 12-18. Mr. Schares returned to work on Monday, March 20.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that IWD overpaid Mr. Schares REGULAR (state) UI benefits in the total gross amount of \$531.00 for the week of March 5-11, 2023.

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.

Iowa Code section 96.5(7) provides, in relevant part:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

Vacation pay.

a. When an employer makes a payment or becomes obligated to make a payment to an individual for vacation pay, or for vacation pay allowance, or as pay in lieu of vacation, such payment or amount shall be deemed wages as defined in section 96.1A, subsection 40, and shall be applied as provided in paragraph "c" hereof.

b. When, in connection with a separation or layoff of an individual, the individual's employer makes a payment or payments to the individual, or becomes obligated to make a payment to the individual as, or in the nature of, vacation pay, or vacation pay allowance, or as pay in lieu of vacation. The amount of a payment or obligation to make payment, is deemed wages as defined in section 96.1A, subsection 40, and shall be applied as provided in paragraph "c" of this subsection 7.

c. Of the wages described in paragraph "a" or paragraph "b", a sum equal to the wages of such individual for a normal workday shall be attributed to, or deemed to be payable to the individual with respect to, the first and each subsequent workday in such period until such amount so paid or owing is exhausted, not to exceed five workdays. Any individual receiving or entitled to receive wages as provided herein shall be ineligible for benefits for any week in which the sums equal or exceed the individual's weekly benefit amount. If the amount is less than the weekly benefit amount of such individual, the individual's benefits shall be reduced by such amount.

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 deduction 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.

In this case, the employer paid Mr. Schares vacation pay for Thursday and Friday, March 2 and 3, and for the week of March 5-11. Iowa law treats the first five days of vacation pay as wages. So, Mr. Schares' vacation pay for March 2, 3, 6, 7 and 8 count as wages. The vacation pay that the employer paid Mr. Schares for March 6, 7 and 8 is more than his weekly UI benefit amount plus \$15.00. That means Mr. Schares is not eligible for UI benefits for the week of March 5-11. Since IWD paid Mr. Schares REGULAR (state) UI benefits in the total gross amount of \$531.00 for this week, but he was entitled to \$0.00 in UI benefits, IWD overpaid Mr. Schares REGULAR (state) benefits in the total gross amount of \$531.00 for the week of March 5-11, 2023

DECISION:

The April 5, 2023 (reference 03) UI decision is AFFIRMED. IWD overpaid Mr. Schares REGULAR (state) UI benefits in the total gross amount of \$531.00 for the week of March 5-11, 2023, which must be repaid.



Daniel Zeno
Administrative Law Judge

April 28, 2023
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with this 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 adquiriera 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.