

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**MELISSA C CHRISTIANS**  
Claimant

**MERCY HOSPITAL**  
Employer

**APPEAL 14A-UI-11828-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/12/14  
Claimant: Respondent (4)**

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Iowa Code S 96.5-5(b) – Workers’ Compensation Temporary Disability Benefits  
Iowa Code § 96.4(3) – Able and Available  
Iowa Code § 96.3(7) – Overpayment

**STATEMENT OF THE CASE:**

The employer filed an appeal from the November 4, 2014 (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 5, 2015. Claimant participated and was represented by Paul McAndrew, Attorney at Law. Employer participated through Angie Hoover, Employee Relations Manager; Tracy Stolpe, Employee Safety Coordinator; and was represented by Joseph W. Younker, Attorney at Law. Claimant’s Exhibits 1 through 12 were entered and received into the record. Employer’s Exhibits A through E were entered and received into the record.

**ISSUES:**

Should the workers compensation benefits paid to claimant, classified as temporary total disability benefits (TTD), be deducted from the claimant’s unemployment insurance benefits on a dollar per dollar basis?

Is the claimant able to and available for work?

Has the claimant been overpaid unemployment insurance benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was injured in a work-related incident and has been receiving workers compensation benefits. The claimant filed a claim for unemployment insurance benefits with an effective date of October 12, 2014. She has received weekly unemployment insurance benefits for the 13-week period ending January 10, 2015 in the gross amount of \$5824, at \$448 per week.

The claimant’s employment as a staff nurse ended on June 23, 2014 and since that time through date of hearing she continues to receive a weekly worker’s compensation payment of \$683.82 that is labeled on her check as TTD. For the 13-week period ending January 10, 2015 the claimant received \$1131.82 per week in unemployment and worker’s compensation benefits.

The claimant has permanent work restrictions that limit her to lifting no more than ten pounds. She has been classified by Vocational Rehabilitation as significantly disabled. She has limits on her ability to stand and sit for long periods of time. She has an associate's degree in nursing, work experience as a floor nurse, and is seeking jobs that would utilize her education and accommodate her work restrictions. At least some jobs as a nurse case manager would meet her physical restrictions.

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

For the reasons that follow, the administrative law judge concludes the claimant is ineligible due to receipt of workers' compensation temporary disability benefits.

Iowa Code § 96.5-5 provides:

An individual shall be disqualified for benefits:

5. Other compensation. For any week with respect to which the individual is receiving or has received payment in the form of any of the following:

a. Wages in lieu of notice, separation allowance, severance pay, or dismissal pay.

b. Compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States.

c. 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, if an individual's benefits are reduced due to the receipt of a payment under this paragraph, the reduction shall be decreased by the same percentage as the percentage contribution of the individual to the plan under which the payment is made.

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", "b", or "c", 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 Admin. Code r. 871-24.13(3)d provides:

(3) Fully deductible payments from benefits. The following payments are considered as wages; however, such payments are fully deductible from benefits on a dollar-for-dollar basis:

d. Workers' compensation, temporary disability only. The payment shall be fully deductible with respect to the week in which the individual is entitled to the workers' compensation for temporary disability, and not to the week in which the payment is paid.

The administrative law judge looks to decisions of the Employment Appeal Board (EAB) for guidance on statutory and administrative rule interpretation. In an recent decision dated January 9, 2015, Appeal No. 15B-IWDUI-281, Larry Simon vs. IWD Investigations and Recovery Unit, the employment appeal determined that when a claimant is receiving TTD benefits and workers compensation benefits they are sometimes receiving more than if they had worked for the week. TTD benefits are deductible from unemployment insurance benefits even if they later may be 'reclassified' as healing period benefits. The EAB further points out the unworkability of a system where workers compensation benefits are later reclassified.

In this case the regulation is clear, the claimant is receiving temporary total disability benefits and those benefits are deductible on a dollar per dollar basis from her unemployment insurance benefits. The claimant's weekly payment of TTD in the amount of \$683.82 is deductible from the employment insurance benefits she received or could receive in the weekly amount of \$448.

Iowa Code § 96.3-7, 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has been overpaid unemployment insurance benefits in the amount of \$5824.

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work effective October 12, 2014.

Iowa Code § 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(1)a, (2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

The claimant has severe work restrictions, but has established that there are at least some case manager jobs that would comply with her work restrictions and allow her to work using her nursing degree. Accordingly, benefits are allowed; provided the claimant is otherwise eligible.

**DECISION:**

The November 4, 2014 (reference 02) decision is modified in favor of the appellant. The claimant's workers compensation benefits are deductible from the claimant unemployment insurance benefits. The claimant is able to work and available for work effective October 12, 2014. The claimant has been overpaid unemployment insurance benefits in the amount of \$5824.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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