

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

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**MARY E RAY**  
Claimant

**APPEAL 22A-UI-09526-DH-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CITY SELECT MOTORS INC**  
Employer

**OC: 03/15/20**  
**Claimant: Appellant (1)**

Iowa Code § 96.6(2) - Timeliness of Appeal  
Iowa Code § 96.3(7) - Recovery of Benefit Overpayment  
Iowa Code § 96.1A(37) - Total, Partial and Temporary Unemployment  
Iowa Code § 96.5(5) - Payment - Other Compensation

**STATEMENT OF THE CASE:**

On April 15, 2022, Mary Ray, claimant/appellant, appealed the March 29, 2022, (reference 01) unemployment insurance decision finding claimant was overpaid regular unemployment benefits in the amount of \$430.00 for one week between 04/12/20 and 04/18/20, due to failing to report wages earned. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for June 3, 2022, at 11:00AM. The following hearings were held together as part of a consolidated hearing: Appeals 22A-UI-09526-DH-T, and 22A-UI-09528-DH-T. Claimant personally participated. Employer, City Select Motors Inc, participated through Sharon Elliott, office manager. Judicial notice was taken of the administrative record, including claimant's appeal and attachment (pay stub for pay period April 13-18, 2020), and DBIN. Department's Exhibit D-1 (wage report and overpayment worksheet) was admitted without objection.

**ISSUES:**

Is the appeal timely?  
Was the claimant overpaid benefits?  
Was the claimant totally, partially, or temporarily unemployed?  
Did the 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:

Claimant's appeal is dated April 15, 2022. To be timely, the appeal needed to be filed on or before April 8, 2022, the first nonholiday weekday ten days after the mailing date. The decision was mailed to claimant's last known addresses on March 29, 2022, which is the same address she currently uses. Claimant received the 03/29/22 decision on April 14, 2022, which is after the deadline. Claimant submitted her appeal the day after receiving the decision.

Claimant filed a claim for unemployment insurance benefits with an original claim date of 03/15/20. Her weekly benefit amount (WBA) was \$430.00. Claimant submitted a claim for the benefit week between 04/12/20 and 04/18/20. The below table shows the benefit week ending for the wages reported by claimant and employer that conflicted and resulted in an overpayment. The employer's report is for wages paid.

Benefit Week Ending	Wages Reported By		Unemployment Benefits		Underpaid	Overpaid
	Claimant	Employer	Paid	Entitled		
04/18/20	\$0.00	\$530.00	\$430.00	\$0.00		\$430.00
Total						\$430.00

Claimant was employed by employer as a part-time assistant office manager with a set schedule. Claimant agrees with the hours and wages reported by employer. Claimant's attachment is a paystub showing she was paid \$430.00 in gross wages for the week in question. Claimant typically worked 32 hours a week and the week in question she worked 40 hours. Claimant reported \$0.00 in wages for the week in question. Claimant, by not reporting her wages was overpaid \$430.00 in regular unemployment benefits.

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

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is timely.

Iowa Code § 96.6(2) provides, in pertinent part: "[u]nless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision."

Iowa Admin. Code r. 871-24.35(1) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

(a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

(b) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott*, 319 N.W.2d 244, 247 (Iowa 1982). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). The appellant did not receive the decision within ten days of the mailing date. After she found out about the decision (on April 14, 2020) she filed her appeal the next day (April 15, 2020). The administrative law judge concludes that claimant timely submitted their appeal after receiving notice of the decision, taking only two days to do so.

An issue in this case is whether the claimant failed to report wages and whether claimant is eligible for benefits or overpaid benefits. It is found that claimant failed to accurately report wages as reflected in the above table for the one week between 04/12/20 and 04/18/20 and was overpaid benefits.

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.

Here, claimant's reported wages received versus what employer reports as payment of wages differed, as reflected in the table in the fact-finding section. This resulted in an overpayment of \$430.00 in regular unemployment benefits. Claimant agrees she was paid \$530.00 and thought she had reported it correctly, but the records show she reported no income earned for the week in question.

The next issue in this case is whether the claimant is totally, partially, or temporarily unemployed. It is found that she was not unemployed for the weeks in question.

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

Claimant does not meet any of the definitions set forth above, working 40 hours for the week in question and earning more than her weekly benefit amount plus \$15. Claimant was not unemployed.

Claimant was not eligible for benefits for the week in question that she received payment as she failed to report her wages which resulted in an overpayment of \$430.00 in regular unemployment benefits that are to be repaid.

Iowa Code § 96.3(7) provides, in pertinent part:

7. Recovery of overpayment of benefits.

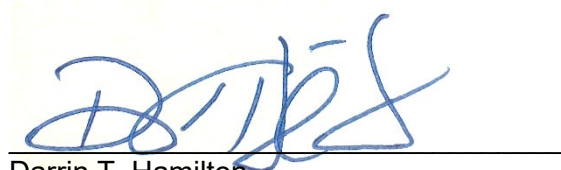
a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by 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.

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

Since claimant was not eligible for benefits in the amount paid for the week in question, as addressed above, the claimant was overpaid benefits in the amount of \$430.00 and repayment is required.

**DECISION:**

The March 29, 2022, (reference 01) unemployment insurance decision is **AFFIRMED**. Claimant failed to correctly report wages and was overpaid regular benefits in the amount of \$430.00 for the week between 04/12/20 and 04/18/20 that shall be repaid.



Darrin T. Hamilton  
Administrative Law Judge

September 30, 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  
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.