

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

DONNA H FISCHELS
Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**APPEAL 22A-UI-09530-DH-T
ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/26/20
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Donna Fischels, claimant/appellant, appealed from the April 6, 2022, (reference 02) unemployment insurance decision that found claimant was overpaid \$1,595.00 in regular unemployment benefits for 5 weeks between 04/26/20 and 05/30/20 due to the July 17, 2020, decision (reference 01) that disqualified her as not able and available for work. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for June 3, 2022, at 1:00PM. The department did not participate. Claimant personally participated. The following hearings were held together as part of a consolidated hearing: Appeals 22A-UI-09530-DH-T; and 22A-UI-09531-DH-T. Judicial notice was taken of the administrative record and DBIN.

ISSUE:

Was the claimant overpaid benefits?

FINDINGS OF FACT:

Having heard the testimony and reviewed the evidence in the record, the undersigned finds:

A July 17, 2020 (reference 01) decision was issued that denied benefits as of 04/26/20 as records show claimant was still employed in her job at the same hours and wages. Claimant appealed the decision. Appeal 20A-UI-09087-JC-T was heard on September 16, 2020, and affirmed the underlying decision, finding claimant would not otherwise be eligible for benefits until such time as she was able and available for work. The appeal decision was issued September 23, 2020. Claimant appealed that decision to the Employment Appeal Board (EAB). The EAB issued decision 22B-UI-09087 on April 14, 2022, dismissing claimant's appeal to the EAB as not timely filed, which deprived the EAB from having jurisdiction to review the merits of the appeal, which in effect kept the decision in 20A-UI-09087-JC-T, which denied benefits, as final. No further appeals were made.

Claimant filed a new claim for unemployment insurance benefits with an original claim date of 04/26/20. Claimant's weekly benefit amount (WBA) was \$319.00. Claimant was paid \$1,595.00 in regular unemployment benefits for 5 weeks between 04/26/20 and 05/30/20.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was overpaid regular unemployment insurance benefits. For the reasons set forth below, it is determined claimant was overpaid benefits.

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.

The EAB issued decision 22B-UI-09087 dismissing claimant's appeal of 20A-UI-09087-JC-T as not timely and kept the decision in 20A-UI-09087-JC-T, affirmed the underlying decision (reference 01) that denied benefits as of 04/26/20 as claimant was still employed in her job at the same hours and wages, making her not able and available for work. There were no further appeals and the decision remains in effect. With claimant not entitled to benefits as of 04/26/20, claimant was overpaid \$1,595.00 in regular unemployment benefits for 5 weeks between 04/26/20 and 05/30/20. The benefits are to be repaid.

DECISION:

The April 6, 2022, (reference 02) unemployment insurance decision finding claimant was overpaid \$1,595.00 in regular unemployment benefits is **AFFIRMED**.



Darrin T. Hamilton
Administrative Law Judge

September 29, 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
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 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.