

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

THIERRY K MUNGANGA
Claimant

APPEAL 24A-UI-05037-SN-T

**ADMINISTRATIVE LAW JUDGE
AMENDED DECISION**

**IOWA WORKFORCE DEVELOPMENT
INVESTIGATIONS & RECOVERY**

**OC: 08/13/23
Claimant: Appellant (1)**

Iowa Code § 96.3(7) – Overpayment of Benefits
Iowa Code § 96.5(5) – Deductions
Iowa Code section 96.1A(37) - Total, Partial, Temporary Unemployment

STATEMENT OF THE CASE:

The claimant, Thierry Munganga, filed an appeal from the April 16, 2024, (reference 05) unemployment insurance decision that found he had been overpaid \$5,143.00 in regular unemployment insurance benefits between August 13, 2023, and December 30, 2023, due to his failure to report wages earned during those weeks. A hearing was initially scheduled for April 15, 2024, at 2:00 p.m. to hear the appeal of the fraud decision initially issued by Iowa Workforce Development, March 14, 2024, reference 03, as 24A-UI-03147-SN-T. Iowa Legal Aid requested the hearing be postponed for further negotiations with Iowa Workforce Development Department. Iowa Workforce Development Department was represented by Jeffrey Konscol. I granted the postponement to May 13, 2024.

On May 6, 2024, a clerk informed both parties that absent extraordinary circumstances I would not postpone the hearing again.

On May 8, 2024, Mr. Konscol replied to the May 6, 2024 email that neither he nor Iowa Legal Aid had been informed of anything calendared. He also mentioned that as part of negotiations Iowa Workforce Development Department issued the April 16, 2024, (reference 05) unemployment insurance decision removing the fraud penalty.

On May 10, 2024, the claimant's attorney, Dan Feltes, requested a subpoena duces tecum for wage and payroll records from Centro. Mr. Feltes acknowledged he had already received these records from Reach For Your Potential.

On May 11, 2024, Mr. Feltes withdrew the request for a subpoena duces tecum reasoning that Centro had complied with his request by providing what would be admitted as Exhibit B.

A telephone conference hearing was conducted on May 13, 2024, at 8:00 a.m. The claimant participated. He was represented by Mr. Feltes. Iowa Workforce Development Department participated through Mark Anderson, an investigator. It was represented by Mr. Konscol. Both parties waived noticed to the hearing. Exhibits A, B, 1, 2, 3, and 4 were received into the record.

The administrative law judge took official notice of the agency records, including documents generated at factfinding. French interpretation was provided through a series of interpreters.

During this hearing, I was informed of the April 16, 2024, (reference 05) decision removing the fraud penalty by Mr. Feltes.¹ I postponed the hearing due to issues with interpretation, re-docketing a new decision, and limitations on time. The April 16, 2024, (reference 05) decision was docketed as appeal 24A-UI-05037-SN-T. Both parties waived the 10-day notification requirement to place the hearing on May 24, 2024, at 3:30 p.m.

On May 24, 2024, the final hearing was conducted. I took official notice of the hearing record for 24A-UI-03147-SN-T. Both participants joined the call with their attorneys and the remainder of the hearing was conducted. French interpretation was provided through a series of interpreters.

The previous decision incorrectly had a four in the code section above despite being an affirmance. I have corrected the code to be a one on this corrected copy.

ISSUES:

Whether the claimant inaccurately reported wages from August 13, 2024, through December 30, 2023?

Whether the claimant is eligible for benefits as being partially unemployed for any of those weeks given inaccuracies in reporting?

Whether the claimant is overpaid benefits?

FINDINGS OF FACT:

Having heard the testimony and having examined the evidence in the record, the administrative law judge finds:

The claimant is an immigrant from Africa. His primary language is French.

The claimant had previously filed claims for benefits in 2018, 2019, and 2020. Prior to filing these claims, a friend helped the claimant read the claimant handbook. To the extent his filings did not match earnings in these years, they were very close to what was reported by his employers.

The claimant filed a claim for benefits on August 13, 2023. The claimant worked for two employers, Reach For Your Potential and Centro Inc. His work for Reach For Your Potential required him to provide personal services for English speaking clients such as driving them to various locations.

When he filed this claim, the claimant reported only reduced wages from Centro. He did not report wages received from Reach for Your Potential.

On February 12, 2024, the Iowa Workforce Development Department sent requests to, Reach For Your Potential and Centro Inc., to confirm what he earned each week from August 13, 2023, through December 24, 2023. Mark Anderson received these records and compiled this

¹ I would only later see references to this in the subpoena that was withdrawn and, in the email, written by Mr. Konscol on May 8, 2024.

information on an audit sheet to calculate the overpayment against what the claimant had reported on his continuing claims.

On March 5, 2024, Mr. Anderson sent the audit sheet consisting of the records in the preceding paragraph to the claimant by mail and email in English. The claimant had not informed Iowa Workforce Development Department that he needed English interpretation.

Shortly thereafter, the two of them exchanged messages. The claimant used Google Translate to respond. The claimant excused reporting \$1.00 for the first five weeks by saying that it was his “first time filing.” He did not provide corrections to the audit calculation. The total overpayment calculated on the audit sheet was \$5,143.00.

	Claimant Reported Earnings	Request of Wage Records Report	Benefits Paid	Benefits Entitled	Overpayment
08/19/23	\$1.00	\$1,003.00	\$581.00	\$ 0.00	\$581.00
08/26/23	\$1.00	\$1,829.00	\$581.00	\$ 0.00	\$581.00
09/02/23	\$1.00	\$ 535.00	\$581.00	\$192.00	\$389.00
09/09/23	\$1.00	\$ 581.00	\$581.00	\$146.00	\$435.00
09/16/23	\$1.00	\$1,091.00	\$581.00	\$ 0.00	\$581.00
09/23/23	\$640.00	\$ 866.00	\$0.00	\$ 0.00	\$ 0.00
09/30/23	\$0.00	\$ 829.00	\$582.00	\$ 0.00	\$582.00
10/07/23	\$0.00	\$ 863.00	\$582.00	\$ 0.00	\$582.00
10/14/23	\$0.00	\$ 0.00	\$582.00	\$582.00	\$ 0.00
11/04/23	\$0.00	\$1,769.00	\$582.00	\$ 0.00	\$582.00
11/11/23	\$ 640.00	\$ 875.00	\$0.00	\$582.00	\$ 0.00
11/18/23	\$0.00	\$ 885.00	\$582.00	\$ 0.00	\$582.00
11/25/23	\$ 347.00	\$ 347.00	\$380.00	\$380.00	\$ 0.00
12/02/23	\$ 347.00	\$ 537.00	\$380.00	\$190.00	\$190.00
12/09/23	\$ 694.00	\$ 701.00	\$ 0.00	\$ 0.00	\$ 0.00
12/16/23	\$ 860.00	\$ 881.00	\$ 0.00	\$ 0.00	\$ 0.00
12/23/23	\$ 868.00	\$ 864.00	\$ 0.00	\$ 0.00	\$ 0.00
12/30/23	\$ 289.00	\$ 347.00	\$438.00	\$380.00	\$58.00

These findings of fact acknowledge the following corrections to Mr. Anderson’s otherwise correct audit sheet displayed above:

For the week ending August 19, 2023, the request for wage records from Centro shows the claimant received \$401.01 for that week. Exhibit B shows those wages should not have been included because they were earned on August 12, 2023. The total amount of earnings for that week was \$602.00 received from Reach for Your Potential.

For the week ending August 26, 2023, the audit incorrectly contained a \$1,137.24 bonus from Centro. This bonus was an annual bonus and should not have been specified as earned that week. The total amount of earnings of \$691.76.

In the week ending September 16, 2023, the claimant received a \$500.00 bonus for getting a Covid19 vaccine that week.

In the week ending September 23, 2023, the claimant received a \$250.00 bonus.

The taxes withheld by Iowa Workforce Development are a benefit bestowed on the claimant that he can claim on his return.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant has been overpaid unemployment \$5,143.00 in regular unemployment benefits.

The decision in this case rests, at least in part, on the credibility of the witnesses. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using his own common sense and experience, the administrative law judge finds Iowa Workforce Development Department's calculation to be more credible than the claimant's determination of what he earned each week.

The claimant excused his filing of \$1.00 for the first five weeks on it being his "first time filing." The claimant's August 23, 2023, claim was not his first. He navigated a far more complicated system in 2020. He filed in 2018 and 2019 as well. Prior to this year, the claimant had not ever received an overpayment decision for failing to report accurate earnings.

It is acknowledged that the claimant may have English proficiency limitations. The record demonstrates the claimant used Google translate as an interpretative aid. The record demonstrates the claimant and Mr. Anderson conversed. The conversation was not perfect, but as to non-numerical things, the claimant was able to provide English responses. There are not different numbers in the French language. The French use the same numbering system that the English do. He also admitted that he knew several English words to perform caretaking services at Reach For Your Potential. But the claimant, even on this record, did not substantively dispute the numbers given by each employer as displayed on the wage request form other than by comparison to Exhibit B and corrections on treatment of bonuses.

Exhibit B and Exhibit 2 are consistent with the following exceptions. Wages earned in the prior week were erroneously added in the week ending August 19, 2023. The bonus being considered for the week ending August 26, 2023, is also erroneous. Otherwise, I find Exhibit B confirms the accuracy of Exhibit 2 more than it tarnishes it.

Exhibit B does not show wages after December 15, 2023, as highlighted by the claimant's attorney, but it also does not show any number for the claimant's earnings. As a result, I don't give it weight for the idea that he did not earn anything past the week ending December 15, 2023. We must remember the claimant reported wages for two weeks after the period Exhibit B

displays wages. The wages the claimant received for the week ending December 30, 2023, rationally fits his receipt of holiday pay that week.

As to accuracy of the wage calculation of Exhibit 3, the claimant's attorney had received wage and hours records per its subpoena request. While these were never admitted, to the extent that they had information demonstrating errors in Exhibit 3, I find they would have been admitted.

The claimant asks whether employers could err on reporting wages. That may be a theoretical possibility by the fact remains that nearly 80% or \$4,071.00 of the overpayment assessed here occurred due to him egregiously underreporting his earnings in error.

Given these observations, I do not find his determination of what he earned credible for any of the claim period against what Iowa Workforce Development Department compiled for the audit packet.

Iowa Code section 96.1A(37) provides:

Totally unemployed", "partially unemployed", and "temporarily unemployed.

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.

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.

Were Wages Properly Deducted?

It is also acknowledged that the claimant raised issues with whether his bonuses should be deducted the weeks ending August 26, 2023, September 16, 2023, and September 30, 2023.

The claimant received an annual bonus during the week of August 26, 2023. Ultimately, even if the bonus is removed for that reason, the claimant is still well over the \$597.00 threshold for receiving benefits that week because his total earnings totaled \$692.00. So, this distinction on the overall number of earnings does not make a difference on whether he was overpaid that week. The same is true regarding the week ending September 30, 2023.

The claimant earned his bonus the week ending September 16, 2023, by getting a Covid19 vaccine that week. As a result, this bonus is assigned to that week as wages.

Is the Claimant Eligible for Any Benefits?

Iowa Code section 96.1A(37) stands for the idea that if the claimant earned more than his weekly benefit amount of \$582.00 plus \$15.00 or \$597.00, then he is ineligible.

The claimant exceeded this threshold for the weeks ending August 19, 2023, August 26, 2023, September 16, 2023, September 30, 2023, October 7, 2023, November 4, 2023, and November 18, 2023. This is true even with the corrections made to the audit sheet.

Were the Benefits Properly Calculated?

Iowa Code section 96.5(5) stands for the idea that if the claimant is eligible, he is afforded an allowance of one quarter his weekly benefit amount of \$145. This is called his allowance. If the claimant's wages for the week are equal or less than the allowance, then he receives it in full. If they exceed the allowance, then the gross wages are reduced by the allowance. This gives the amount deductible from the weekly benefit amount to give the amount eligible.

I find that the Iowa Workforce Development Department properly calculated the benefits for each week in the audit packet as displayed above in the table in the findings of facts.

For the week ending September 2, 2023, the claimant earned \$535.00 in unemployment insurance benefits. The amount to be deducted from the claim is \$390.00. The claimant's weekly benefit amount of \$582.00 is then reduced by \$390.00. The claimant is eligible for \$192.00 in benefits.

For the week ending September 9, 2023, the claimant earned \$581.00 in unemployment insurance benefits. The amount to be deducted from the claim is \$436.00. The claimant's weekly benefit amount of \$582.00 is then reduced by \$390.00. The claimant is eligible for \$146.00 in benefits.

For the week ending November 25, 2023, the claimant earned \$347.00 in unemployment insurance benefits. The amount to be deducted from the claim is \$202.00. The claimant's weekly benefit amount of \$582.00 is then reduced by \$202.00. The claimant is eligible for \$380.00 in benefits.

For the week ending December 2, 2023, the claimant earned \$347.00 in unemployment insurance benefits. The amount to be deducted from the claim is \$202.00. The claimant's weekly benefit amount of \$582.00 is then reduced by \$202.00. The claimant is eligible for \$380.00 in benefits.

Whether the Claimant has been Overpaid?

Iowa Code section 96.3(7)a-b, 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.

The claimant exceeded this threshold for the weeks ending August 19, 2023, August 26, 2023, September 16, 2023, September 30, 2023, October 7, 2023, November 4, 2023, and November 18, 2023. The total amount of overpayment for these weeks given his ineligibility is \$4,071.00.

For the week ending September 2, 2023, the claimant received \$581.00 in benefits, but he was only entitled to \$192.00 in benefits. He was overpaid \$389.00 in benefits for this week.

For the week ending September 9, 2023, the claimant received \$581.00 in benefits, but he was only entitled to \$146.00. He was overpaid \$435.00 in benefits for this week.

For the week ending December 2, 2023, the claimant received \$380.00 in benefits, but he was only entitled to \$190.00. He was overpaid \$190.00 in benefits for this week.

The total amount the claimant has been overpaid is \$5,143.00.

Other Arguments

The claimant asks that this case be dismissed because he contends Iowa Workforce Development Department has not met its burden of proof. Iowa Code section 96.3(7)a-b, as amended in 2008, states clearly that I cannot consider the claimant's "good faith" mistakes, whether they be due to English proficiency or otherwise, in filing as a defense to the overpayment.

I also find it is not Iowa Workforce Development's burden to show irrefutable proof of wages to the dollar. To read the burden of proof this way also would be in considerable tension with the overall statutory text. The claimant has the burden of showing he is able and available for work each week under Iowa Code section 96.4(3)a. Iowa Code section 96.4(3)a references totally, temporarily, and partially unemployment as defined under Iowa Code section 96.1A(37). Whether the claimant is any of those things relies on accurate reporting of his earnings. If he is working such that he cannot accept any more work, he is not able and available to work. See Iowa Admin. Code r. 871-24.23(23).

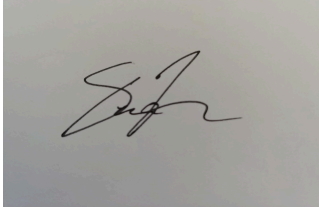
The claimant takes issue with the way the Iowa Code addresses this, but I cannot sit in judgment of what the Iowa Legislature has adopted. I do not have the power to waive funds under the Iowa Code given this language. Ultimately, I find these concerns to be theoretical on this record because the claimant demonstrated his ability to file claims accurately in past years. Even within this filing period for his claim, he demonstrated an ability to report the same amount of close to the amount he received for more than a month. He does not provide a plausible explanation for why did not do so on this record, even if I could grant the relief he seeks under the Iowa Code.

Finally, the claimant contends taxes withheld by Iowa Workforce Development Department should not be assessed against him on the overpayment. I agree with the Iowa Workforce Development Department that these withholdings were a benefit bestowed on the claimant that he can claim on his return.

The total amount the claimant has been overpaid is \$5,143.00. I AFFIRM the overpayment decision dated April 16, 2024, (reference 05).

DECISION:

The April 16, 2024, (reference 05) unemployment insurance decision AFFIRMED. The claimant has been overpaid unemployment \$5,143.00 in regular unemployment benefits.

A rectangular box containing a handwritten signature in black ink. The signature is cursive and appears to read "Sean M. Nelson".

Sean M. Nelson
Administrative Law Judge II
Iowa Department of Inspections & Appeals
Administrative Hearings Division – UI Appeals Bureau

May 29, 2024
Decision Dated and Mailed

smn/scn

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
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
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. *There is no filing fee to file an appeal with the Employment Appeal Board.*

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 file a petition for judicial review in district court.

2. If you do not file 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 www.iowacourts.gov/efile. *There may be a filing fee to file the petition in District Court.*

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
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: 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. *No hay tarifa de presentación para presentar una apelación ante la Junta de Apelación de Empleo.*

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 no presenta una apelación de la decisión del juez ante la Junta de Apelación de Empleo dentro de los quince (15) días, la decisión se convierte en una acción final de la agencia y tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días. Puede encontrar información adicional sobre cómo presentar una petición en www.iowacourts.gov/efile. *Puede haber una tarifa de presentación para presentar la petición en el Tribunal de Distrito.*

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.