

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

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**SARA KELLER**  
Claimant

**LINDSAY PARK BOAT CLUB, INC**  
Employer

**FAILTE, INC**  
Employer

**APPEAL 22A-UI-18160-S2-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 03/15/20**  
**Claimant: Appellant (2)**

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Iowa Code § 96.3-7 - Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

The claimant appealed a representative's decision dated October 11, 2022, (reference 02) that concluded the claimant was overpaid \$333.00 in unemployment insurance benefits due to a failure to report wages earned from Lindsay Park Boat Club, Inc. and Failte, Inc.. After a hearing notice was mailed to the parties last-known addresses of record, a telephone hearing was held on November 9, 2022, and was consolidated with the hearing for appeal 22A-UI-18161-S2-T. Claimant Sara L. Keller participated personally. Employer Failte, Inc. participated through owner/manager Sasha Rowland and accountant Martha Wells. Employer Lindsay Park Boat Club, Inc. participated through board member Tim Proudfit. The administrative law judge took official notice of the administrative record.

**ISSUE:**

The issue is whether the claimant is overpaid unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant filed a claim for unemployment insurance benefits with an effective date of March 15, 2020. Claimant reopened her claim on November 22, 2020. Claimant's weekly benefit amount is \$134.00. Claimant filed weekly claims when she was laid off from work in March 2020 and continued filing when she returned to work at reduced hours.

The October 11, 2022, (reference 02) decision determined that claimant was overpaid regular state unemployment insurance benefits in the amount of \$333.00 for the weeks listed in the chart below. Employer Failte, Inc. and Lindsay Park Boat Club, Inc. incorrectly reported the hours worked and wages earned by claimant for each of the weeks listed below.

Claimant earned the following wages and received the following amounts in benefits:

Week ending	Earnings claimant reported	Benefit amount paid
March 21, 2020	\$0.00	\$134.00
May 16, 2020	\$0.00	\$134.00
November 28, 2020	\$120.00	\$47.00
December 12, 2020	\$100.00	\$67.00
December 19, 2020	\$98.00	\$69.00
January 2, 2021	\$45.00	\$122.00
January 17, 2021	\$98.00	\$69.00
January 30, 2021	\$104.00	\$63.00

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant accurately reported her wages and is not overpaid benefits.

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, considering the applicable factors listed above, and using his own common sense and experience, the administrative law judge finds the claimant's testimony and earnings reports more credible than both employers' responses to the wage audit. She makes this finding because claimant availed herself to providing testimony under oath and provided an explanation for how she reported wages. Both employers responded to IWD's request for claimant's wages during the period of time she filed for benefits. Employer Failte, Inc. provided documentation that claimant worked and earned wages during certain weeks, but during testimony, its witness indicated claimant did not perform work during each of the weeks listed in the response to the wage audit. Employer Failte, Inc. did not provide testimony from the individual who prepared the wage records request; however, it provided testimony from a witness that employer reports wages contrary to the instructions listed on the request for wage audit. Rather than reporting claimant's exact hours worked and wages earned each week, it took each bi-weekly paycheck and split it in half. This led to employer reporting wages for claimant during weeks she did not perform any work for it. Employer Lindsay Park Boat Club, Inc. similarly did not provide testimony from the individual who prepared the wages records request. Its witness had no knowledge as to whether the response to the wage records request was accurate. As the claimant presented direct, first-hand testimony while the employer relied upon second-hand reports or inaccurate information, the administrative law judge concludes that the claimant's recollection of the events is more credible than that of the employer.

Iowa Code § 96.1A(37) 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.

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.

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.

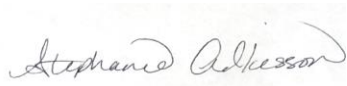
Under Iowa Employment Security Law, an individual must be unemployed to be eligible for benefits. Iowa Code § 96.19(38). Total and temporary unemployment occur when an individual has received no wages and performed no services during any given week. *Id.* An individual who is totally unemployed has been permanently separated from an employer, whereas an individual who is temporarily unemployed has not been permanently separated from employment. To be partially unemployed, an individual must be working less than their regular full-time work week and earn less than their weekly benefit amount plus fifteen dollars. *Id.*

For the weeks ending March 21, 2020, and May 16, 2020, claimant did not perform any work and received no earnings and thus is entitled to her full unemployment benefit amount of \$134.00 each of these two weeks. Claimant received her full weekly benefit amount each of these two weeks. Therefore, claimant was not overpaid during the two weeks ending March 21, 2020, and May 16, 2020.

For the remaining weeks in question, the weeks ending November 28, December 12, December 19, 2020, and January 2, January 23, and January 30, 2021, claimant worked less than her full-time hours and earned less than her weekly benefit amount plus \$15.00. She was thus partially unemployed and entitled to the partial benefits she received for the six weeks listed above. Therefore, claimant was not overpaid for these weeks. As claimant correctly reported her wages each week that she filed a weekly claim for benefits, claimant is not overpaid benefits.

**DECISION:**

The decision of the representative dated October 11, 2022, (reference 02) is reversed. The claimant has not been overpaid unemployment insurance benefits in the amount of \$333.00.



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Stephanie Adkisson  
Administrative Law Judge

November 17, 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.