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

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APPEAL 22A-UI-17423-JD-T

ADMINISTRATIVE LAW JUDGE DECISION

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

IRVIN MCDOWELL Claimant **LYNCH ROOFING & SIDING INC** Employer	**APPEAL 22A-UI-17423-JD-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 01/07/18** **Claimant: Appellant (1)**

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Code § 96.19(38) – Total, partial, temporary unemployment
Iowa Code § 96.5(5) – Payment – Severance pay, disability, pension

STATEMENT OF THE CASE:

On September 10, 2022, Irvin McDowell (claimant/appellant) filed an appeal from the September 6, 2022, reference 01, unemployment insurance decision that concluded that the claimant had a net overpayment of $542.00 from February 25, 2018 through April 28, 2018, due to incorrectly reported wages from Lynch Roofing & Siding, Inc. A telephone hearing was held on October 20, 2022 pursuant to due notice. The claimant, Irvin McDowell, participated and testified. The employer did not participate. The administrative law judge took official notice of the administrative record.

ISSUES:

Whether claimant is totally, partially or temporarily unemployed.
Whether claimant correctly reported wages earned.
Whether claimant is eligible for benefits based on wages earned.
Whether claimant is overpaid UI benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant filed an initial claim for benefits effective January 7, 2018. Claimant's weekly benefit amount was $361.00.

The following chart reflects the weeks that claimant filed ongoing weekly claims, the wages that claimant submitted on his weekly claims, the wages that employer reported claimant earned each week and the amount of UI benefits paid to claimant:

Benefit Week Ending	Wages Submitted by Claimant	Wages Reported by Employer	UI Benefits Paid To Claimant
03/03/18	68.00	455.80	361.00
03/10/18	455.00	68.80	0.00

03/17/18	69.00	350.00	361.00
03/24/22	271.00	568.75	180.00
03/31/18	119.00	332.50	0.00
04/07/18	332.00	70.00	119.00
04/14/18	70.00	428.75	361.00
04/21/18	362.00	262.50	89.00
04/28/22	249.00	647.50	202.00

Claimant failed to report his gross wages for the week in question due to clerical error.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes:

Iowa Code section 96.3(7) states:

> 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.

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.

Iowa Code section 96.3(3) provides:

3. Partial unemployment. An individual who is partially unemployed in any week as defined in section 96.1A, subsection 37, paragraph "b", and who meets the conditions of eligibility for benefits shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. The benefits shall be rounded to the lower multiple of one dollar.

Iowa Admin. Code r. 871-24.18 provides:

Wage-earnings limitation. An individual who is partially unemployed may earn weekly a sum equal to the individual's weekly benefit amount plus $15 before being disqualified for excessive earnings. If such individual earns less than the individual's weekly benefit amount plus $15, the formula for wage deduction shall be a sum equal to the individual's weekly benefit amount less that part of wages, payable to the individual with respect to that week and rounded to the lower multiple of one dollar, in excess of one-fourth of the individual's weekly benefit amount.

$ (wages) - $ (25% of WBA) = $ (wage deduction)
$ (WBA) - $ (wage deduction) = $ (partial weekly benefit amount)

The following chart reflects the benefits claimant received, the benefits claimant was entitled to and the resulting underpayment or overpayment:

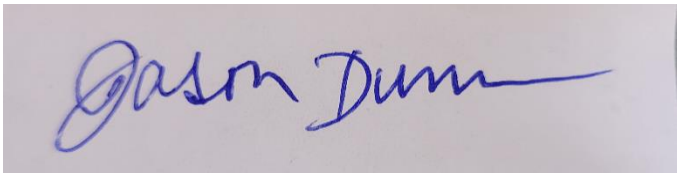
Benefit Week Ending	Benefits Paid to Claimant	Benefits Claimant was Entitled to	Under Payment	Over Payment
03/03/18	361.00	0.00		361.00

03/10/18	0.00	361.00	361.00	
03/17/18	361.00	0.00		361.00
03/24/22	180.00	101.00		79.00
03/31/18	0.00	119.00	119.00	
04/07/18	119.00	242.00	242.00	
04/14/18	361.00	0.00		361.00
04/21/18	89.00	100.00	100.00	
04/28/22	202.00	0.00		202.00
			$822.00	1,364.00
			TOTAL	$542.00

Claimant's net overpayment is $542.00 ($1,364.00 - $822.00).

DECISION:

The September 6, 2022, reference 01, unemployment insurance decision is affirmed. Claimant's net overpayment from February 25, 2018 and April 28, 2018 is $542.00. These benefits must be repaid



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Jason Dunn
Administrative Law Judge

__November 1, 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.