

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

**ABBEE E JOHNSTON**  
Claimant

**MENARD INC**  
Employer

**APPEAL NO. 22A-UI-18447-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/29/20**  
**Claimant: Appellant (3)**

Iowa Code Section 96.3(7) - Overpayment  
Iowa Code Section 96.1A(37) – Temporary & Partial Unemployment

**STATEMENT OF THE CASE:**

On October 31, 2022, Abbey Johnston (claimant) filed a timely appeal from the October 21, 2022 (reference 04) decision that held she was overpaid \$893.00 in regular state benefits for three weeks between April 26, 2020 and May 23, 2020, based on the deputy's conclusion the claimant incorrectly reported wages earned with Menard, Inc. After due notice was issued, a hearing was held on November 18, 2022. Claimant participated and presented additional testimony through Sandra Melgarejo. The employer did not appear as a party for the hearing and did not participate as a party in the hearing. However, Ms. Melgarejo is a Menard, Inc. employee and testified at the claimant's request. The hearing in this matter was consolidated with the hearing in Appeal Number 22A-UI-18448-JT-T. Exhibit A, the claimant appeal letter, was received into evidence. Department Exhibits D-1 through D-9 were received into evidence.

**ISSUES:**

Whether the claimant was overpaid regular benefits for three weeks between April 26, 2020 and May 23, 2020.

Whether the claimant was partially and/or temporarily unemployed during the weeks ending May 2, May 16 and May 23, 2020.

**FINDINGS OF FACT:**

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

Abbey Johnston (claimant) established an original claim that was effective March 29, 2020. She established her claim in response to a March 27, 2020, COVID-19 related temporary layoff from full-time employment with CNOS Foundation. Iowa Workforce Development set the claimant's weekly benefit amount at \$481.00. The claimant made weekly claims that included weekly claims for the four weeks between April 26, 2020 and May 23, 2020. The claimant reported wages and received benefits for those four weeks as follows:

<u>Benefit Week End Date</u>	<u>Wages Claimant Reported</u>	<u>Regular Benefits Paid</u>
5/2/20	21.00	481.00
5/9/20	468.00	133.00
5/16/20	377.00	224.00
5/23/20	213.00	388.00

The claimant also received \$600.00 in Federal Pandemic Unemployment Compensation (FPUC) for each of the four weeks between April 26, 2020 and May 23, 2020. The claimant's eligibility for the FPUC benefits depended on the claimant's eligibility for regular state benefits for the same week.

The claimant began new employment with Menard, Inc. effective April 23, 2020. The claimant's hourly wage at Menard's was \$11.00. The claimant performed work for Menard's during each of the four weeks between April 26, 2020 and May 23, 2020 and earned wages for that work as follows:

<u>Benefit Week End Date</u>	<u>Hours Worked</u>	<u>Wages Earned</u>
5/2/20	42.37	572.92
5/9/20	34.95	461.38
5/16/20	37.62	503.96
5/23/20	37.73	497.31

The claimant worked all the hours Menard's had for her during the four weeks in question.

On October 14, 2020, Iowa Workforce Development mailed a Request of Wage Records to Menard, Inc. On October 26, 2020, Jeremy Mead, Store Manager for the Menard's store in Sioux City, Iowa responded with the above-referenced work hours and earned wages information. During the November 18, 2022 appeal hearing, Sandra Melgarejo, Menard, Inc. Employment Center Coordinator, confirmed the accuracy of the information Mr. Mead provided. The claimant concedes the accuracy of the wage information the employer provided. Based on the correct information provided by the employer, the claimant's wages for the weeks ending May 2, May 16, and May 23, exceeded her weekly benefit amount plus \$15.00. The claimant's \$461.38 correct wages for the week ending May 9, 2020 were less than the \$468.00 in wages the claimant reported for that week.

An Iowa Workforce Development Benefits Bureau deputy used the correct wages provided the employer to redetermine the claimant eligibility for regular and FPUC benefits for each of the four weeks between April 26, 2020 and May 23, 2020. The deputy determined the claimant was not eligible for the regular or federal benefits the claimant received for the weeks ending May 2, May 16, and May 23, 2020 and entered the overpayment decisions from which claimant appeals in this matter and the companion appeal number. During the redetermination process the deputy made a typographical error regarding the regular benefits paid for the week ending May 16, 2020 and misstated the amount as \$24.00, rather than the correct \$224.00. The typographical error is also reflected in the total overpayment amount the deputy calculated, \$893.00, rather than a \$1,093.00 total that accurately reflects the benefits paid to the claimant for the three weeks in question.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

Gross wages must be reported to Iowa Workforce Development as part of the weekly claim for the week in which the wages were earned. See Iowa Administrative Code rules 871-24.2(1)(g)(3)(2) and 871-24.2(2)(e)(2).

The reporting requirement is addressed in the 2019 Unemployment Insurance Claimant Handbook at page 8:

### What to Report on the Weekly Claim?

You must report all gross earnings and gross wages on the weekly claim. Wages are reportable when earned, not when paid. Gross earnings or gross wages are your earnings before taxes or other payroll deductions are made. For additional information, please refer to the page on reportable income.

2019 Unemployment Insurance Claimant Handbook Updated 1-1-20.pdf.

Iowa Admin. Code rule 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.

Iowa Code section 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.

The claimant was overpaid \$1,093.00 in regular benefits for a total of three weeks between April 26, 2020 and May 23, 2020. The claimant was overpaid \$481.00 for the week ending May 2, \$224.00 for the week ending May 16, and \$388.00 for the week ending May 23, 2020. The overpayments resulted from the claimant incorrectly reporting her earned wages for the three weeks in question. During those three weeks, the claimant's earned wages exceeded her \$481.00 weekly benefit amount plus \$15.00 (\$496.00). Based on the wages earned during each of those three weeks, the claimant was not partially unemployed within the meaning of the law during any of those three weeks and, therefore, was not eligible for benefits for any of those three weeks. The claimant must repay the overpaid regular state benefits.

**DECISION:**

The October 21, 2022 (reference 04) decision is MODIFIED ADVERSE TO THE CLAIMANT/APPELLANT as follows. The claimant was overpaid \$1,093.00 in regular benefits for a total of three weeks between April 26, 2020 and May 23, 2020. The claimant was overpaid \$481.00 for the week ending May 2, \$224.00 for the week ending May 16, and \$388.00 for the week ending May 23, 2020. The claimant must repay the overpaid regular state benefits.



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James E. Timberland  
Administrative Law Judge

November 22, 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>.

**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](http://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 adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

**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.