

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

PHING N DUN
Claimant

APPEAL NO. 23A-UI-06880-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 12/25/22
Claimant: Appellant (1R)**

Iowa Code Section 96.3(7) – Overpayment of Benefits

STATEMENT OF THE CASE:

On July 11, 2023, Phing Dun (claimant) filed a timely appeal from the July 7, 2023 (reference 03) decision that held the claimant was overpaid \$1,062.00.00 in regular benefits for three weeks between May 7, 2023 and May 27, 2023, due to a June 13, 2023 decision that denied benefits for the period beginning May 7, 2023. After due notice was issued, a hearing was held on July 28, 2023. The claimant participated. The Appeals Bureau provided notice to Iowa Workforce Development Integrity Bureau but IWD did not appear or participate in the appeal hearing. Exhibit A, the claimant's online appeal, was received into evidence. The administrative law judge took official notice of the following Iowa Workforce Development administrative records: DBRO, NMRO, the June 13, 2023 (reference 02) decision, and the administrative law judge decision in Appeal Number 23A-UI-06165-CS-T.

ISSUE:

Whether the claimant was overpaid \$1,062.00.00 in regular benefits for three weeks between May 7, 2023 and May 27, 2023, due to a June 13, 2023 decision that denied benefits for the period beginning May 7, 2023. .

FINDINGS OF FACT:

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

Phing Dun (claimant established an "additional claim" for benefits that was effective May 7, 2023. Iowa Workforce Development had previously set the weekly benefit amount at \$354.00. The claimant made weekly claims that included weekly claims for each of the three weeks between May 7, 2023 and May 27, 2023. IWD disbursed \$1,062.00 in benefits for those three weeks.

On June 13, 2023, Iowa Workforce Development Benefits Bureau issued a reference 02 decision that denied benefits for the period beginning May 7, 2023, based on the deputy's determination the claimant that the claimant was an on-call employee, was still employed in the same capacity as in the original contract of hire, and therefore was not available for work within the meaning of the law. The reference 02 decision prompted the overpayment decision from which the claimant appeals in the present matter.

On June 16, 2023, the claimant filed a timely appeal from the reference 02 decision. On July 11, 2023, an administrative law judge entered a decision in Appeal Number 23A-UI-06165-CS-T that dismissed the claimant's appeal from the reference 02 decision in light of the claimant's non-appearance for an appeal hearing set for July 10, 2023. The administrative law judge's decision left the June 13, 2023 (reference 02) disqualification decision in place. The reference 02 decision and the administrative law judge decision in Appeal Number 23A-UI-06165-CS-T remain in effect.

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.

Because the June 13, 2023 (reference 02) decision denied benefits for the period beginning May 7, 2023, and because the reference 02 decision remains in effect, the \$1,062.00 in benefits that Iowa Workforce Development issued for the three weeks between May 7, 2023 and May 27, 2023 is an overpayment of benefits. The claimant must repay the overpaid benefits.

DECISION:

The July 7, 2023 (reference 03) decision is affirmed. The claimant was overpaid \$1,062.00 in regular benefits for three weeks between May 7, 2023 and May 27, 2023, due to a June 13, 2023 decision that denied benefits for the period beginning May 7, 2023. .

REMAND:

This matter is REMANDED to Iowa Workforce Development Benefits Bureau for consideration of the able and available, partial unemployment, and temporary unemployment issues for the benefit period beginning June 11, 2023. The claimant is a non-native English speaker and asserts she may not have accurately and completely expressed her employment status with SDH Education West, L.L.C. when speaking with the IWD about that matter concerning the period beginning May 7, 2023. The Benefits Bureau may at its discretion elect to reconsider its determination for the period beginning May 7, 2023, but this decision imposes no obligation to visit the able and available, partial unemployment, and temporary unemployment issues for the period of May 7, 2023 through June 10, 2023, which was the period under consideration at the time the June 13, 2023 (reference 02) decision was entered.



James E. Timberland
Administrative Law Judge

July 31, 2023
Decision Dated and Mailed

jet/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
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>.

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 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.