

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

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**LAUREN NELSON**  
Claimant

**APPEAL 22A-UI-15180-S2-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JETHRO AND JAKE'S, INC**  
Employer

**OC: 04/12/20  
Claimant: Appellant (3)**

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Iowa Code § 96.3-7 - Recovery of Overpayment of Benefits  
Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment  
Iowa Admin. Code r. 871-24.23(26) – Availability Disqualifications Same Hours and Wages

**STATEMENT OF THE CASE:**

Claimant Lauren Nelson appealed a representative's decision dated July 6, 2022, (reference 01) that concluded the claimant was overpaid \$549.00 and underpaid benefits, resulting in a net overpayment of \$164.66 in unemployment insurance benefits due to a failure to report wages earned from Jethro and Jake's, Inc. After due notice was issued, a hearing was held by telephone conference call on August 24, 2022, and was consolidated with the hearing for appeals 22A-UI-15179-S2-T, 22A-UI-15181-S2-T, and 22A-UI-15183-S2-T. Claimant participated personally. Employer Jethro and Jake's, Inc. participated through witness Sarah Huffman. The administrative law judge took administrative notice of claimant's unemployment insurance benefits records.

**ISSUES:**

Is the claimant totally, partially, or temporarily unemployed?  
Is the claimant 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 April 12, 2020, after she was laid from this employer. Claimant was employed part-time for this employer from December 19, 2019, and separated permanently on or about August 16, 2021. Claimant was a server. She was not guaranteed a certain number of hours each week when she was hired part-time. Her working hours fluctuated between 12-30 hours per week.

Employer had no work available for claimant between April 12, 2020, and May 9, 2020. Claimant filed for and received her full benefit amount for the four weeks ending May 9, 2020, in the amount of \$1,428.00. Employer recalled claimant the week of May 10, 2020, and claimant returned to work at that time. Prior to the pandemic claimant worked double shifts, but when she returned to work in May 2020 she requested to work day shifts only as she did not have

childcare in the evening. Claimant continued filing for benefits when she returned to work in May 2020 because she was working fewer hours due to her self-reduction in hours and due to a fluctuation in employer's business. Claimant received a total of \$6,681.66 in regular state unemployment benefits between May 10, 2020, and September 26, 2020, when her regular state benefits were exhausted.

The July 6, 2020 (reference 01) decision determined that claimant failed to correctly report wages between May 10, 2020, and September 26, 2020.

### **REASONING AND CONCLUSIONS OF LAW:**

For the following reasons the administrative law judge concludes the claimant was temporarily unemployed for the four weeks ending May 9, 2020, and is eligible for benefits for those four weeks. Claimant was not partially unemployed, was not eligible for benefits, and was overpaid regular state unemployment insurance benefits effective May 10, 2020.

Iowa Code § 96.19(38) 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.

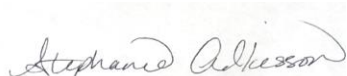
Under Iowa Employment Security Law, an individual must be unemployed to be eligible for benefits. Iowa Code § 96.19(38). Total and temporary unemployment occur when an individual has received no wages and performed no services during any given week. *Id.* An individual who is totally unemployed has been 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.*

Here, claimant filed a claim for unemployment insurance benefits because she was laid off due to a lack of work. Employer had no work available for claimant between April 12, 2020, and May 9, 2020. As such, claimant was temporarily unemployed for these four weeks. Benefits are allowed for the four weeks ending May 9, 2020.

Claimant continued filing for benefits when she returned to work the week of May 10, 2020, because she received fewer hours that she did prior to the pandemic. If an individual is employed in a part-time position working the same hours and wages as contemplated at hire, he or she cannot be considered partially unemployed. Iowa Admin. Code r. 871-24.23(26). Claimant was hired into a part-time position with fluctuating hours, with no guarantee of a certain number of hours. She worked part-time for employer from December 19, 2019, going forward. As claimant continued working in a part-time job in the same hours and wages contemplated at hire, the claimant is not partially unemployed and is not eligible for benefits. As such, claimant received \$5,253.66 in regular state unemployment insurance benefits between May 10, 2020, and September 26, 2020, that she was not entitled to receive.

**DECISION:**

The decision of the representative dated July 6, 2022, (reference 01) is modified in favor of the respondent. Claimant was temporarily unemployed between April 12, 2020, and May 9, 2020. Benefits are allowed for the four weeks ending May 9, 2020. Claimant was still employed in her part-time job at the same hours and same wages as in her original contract of hire and was therefore not partially unemployed effective May 10, 2020. Benefits are denied effective May 10, 2020. Claimant was overpaid regular state unemployment insurance benefits in the amount of \$5,253.66 to which she was not entitled, and those benefits must be recovered in accordance with the law.



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Stephanie Adkisson  
Administrative Law Judge

September 30, 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.