

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

MARLANA D VOLZ
Claimant

APPEAL NO. 23A-UI-00725-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DENTAL TECHNICIANS INC
Employer

OC: 03/29/20
Claimant: Appellant (4)

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

STATEMENT OF THE CASE:

On January 24, 2023, Marlana Volz (claimant) filed a timely appeal from the January 20, 2023 (reference 01) decision that held she was overpaid \$258.00 in regular state benefits for two weeks between March 29, 2020 and May 9, 2020, based on the deputy's conclusion the claimant incorrectly reported wages earned with Dental Technicians, Inc. After due notice was issued, a hearing was held on February 9, 2023. Claimant participated. Gary Marinaro represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 23A-UI-00726-JT-T. Exhibit A, the online appeal from the reference 01 decision, and Exhibit B, Time Reports, were received into evidence. The administrative law judge took official notice of the following Iowa Workforce Development administrative records: the reference 01 and 02 decisions, DBIN, KCCO, KPYX, WAGEC, the reference 01 and 02 Overpayment Worksheets, the Request of Wage Records, and the Audit of Reported Wages..

ISSUES:

Whether the claimant was partially and/or temporarily unemployed for the six weeks between March 29, 2020 and May 9, 2020.

Whether the claimant was overpaid \$258.00 in regular state benefits for two weeks between March 29, 2020 and May 9, 2020.

FINDINGS OF FACT:

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

Marlana Volz (claimant) has at all relevant times been employed by Dental Technicians, Inc. as a full-time salaried technician and office worker. During the relevant period, the claimant's monthly salary was approximately \$3,416.00. The employer paid the claimant one-half of the salary twice per month. The salary equates to a \$40,992.00 annual salary and a \$788.30 weekly salary. Workforce Development records (WAGEC) reflect quarterly wages reported by the employer as follows:

QUARTER

WAGES

2018/4	10,249.98
2019/1	10,249.98
2019/2	10,249.98
2019/3	9,970.99
2019/4	10,249.98
2020/1	10,249.98
2020/2	6,511.99
2020/3	10,249.98
2020/4	10,471.65

The \$10,249.98 quarterly wages in the first and third quarters of 2020 confirm a weekly salary of \$788.00 (rounded) (\$10,249.98 divided by 13 = \$788.46). The \$788.00 weekly salary equates to an hourly wage of \$19.70 for a 40-hour work week.

During the week of March 29, 2020 through April 4, 2020, the claimant used 15 hours of vacation benefit for March 30 and 31, 2020 and worked two hours on March 31, 2020 before the employer temporarily laid her off effective Wednesday, April 1, 2020 in response to a COVID-19 related State of Iowa Public Health Proclamation that compelled the employer to temporarily close its business. Based on the \$19.70 hourly wage, the two hours in earned wages totaled \$39.40 and the total value of the vacation pay was \$295.50. The combined total wages for the week ending April 4, 2020 was \$334.90. Aside from the claimant's use of 15 hours of vacation benefits for Monday and Tuesday of that week, the claimant was otherwise available for work during the week that ended April 4, 2020.

The claimant remained available for full-time work, but was temporarily laid off throughout the four-week period of April 5, 2020 through May 2, 2020. The claimant neither earned nor received wages for those weeks.

During the week of May 3-9, 2020, the employer recalled the claimant to the employment effective Wednesday, May 6, 2020. During that week, the claimant worked 23 hours and earned wages totaling \$453.10.

The claimant established an original claim for benefits that Iowa Workforce Development deemed effective March 29, 2020. IWD set the weekly benefit amount for regular benefits at \$445.00. The claimant made weekly claims for each of the six weeks between March 29, 2020 and May 9, 2020 and reported wages as follows:

WEEK	WK	AB	RF	ER	ACT	PROCESSED						
ENDING	ST	AV	OF	CT	WAGES	VACAT	HLDY	P	DATE	MODE	TIME	
05/09/20	S	Y	N	0	0	450	0	0	N	05/10/20	WEEKLYCL	18.28
05/02/20	N	Y	N	0	0	0	0	0	N	05/03/20	WEEKLYCL	20.56
04/25/20	N	Y	N	0	0	0	0	0	N	04/27/20	WEEKLYCL	09.09
04/18/20	N	Y	N	0	0	0	0	0	N	04/20/20	WEEKLYCL	08.50
04/11/20	N	Y	N	0	0	0	0	0	N	04/12/20	WEEKLYCL	22.42
04/04/20	L	Y	N	0	0	39	293	0	N	04/12/20	WEEKLYCL	22.40

IWD paid regular benefits to the claimant as follows:

PAYMENT-RECORDS . .				***** UI ***** ***** FE *****						
BWE-DATE	RPT-CODE	AMT-RP	ISSUE-DT	P	PAY-CODE	AMOUNT	PAY-CODE	AMOUNT	PGM	
04/04/20	WAGE-VAC	293.00	04/13/20	2	PAID-D	152.00		.00	01	
04/11/20	CLEAR	.00	04/13/20	2	PAID-D	445.00		.00	01	
04/18/20	CLEAR	.00	04/20/20	2	PAID-D	445.00		.00	01	
04/25/20	CLEAR	.00	04/27/20	2	PAID-D	445.00		.00	01	

05/02/20 CLEAR	.00	05/04/20 2 PAID-D	445.00	.00 01
05/09/20 OVER15	450.00	05/11/20 2 PAID-D	106.00	.00 01

Note that when the IWD computer system initially determined the claimant's benefit amount for the week that ended April 4, 2020, the computer system disregarded the \$39.00 in earned wages and deducted only the \$293.00 in reported vacation pay from the \$445.00 weekly benefit amount.

Based on the payment of regular benefits, IWD also paid \$600.00 in Federal Pandemic Unemployment Compensation (FPUC) to the claimant for each of the six weeks between March 29, 2020 and May 9, 2020. The claimant's eligibility for the FPUC benefits depended on the claimant being eligible for regular benefits for the same week.

On October 14, 2020, Iowa Workforce Development mailed a Request of Wage Records to the employer. IWD requested information regarding the hours the claimant had worked and the wages the claimant had earned during the six weeks between March 29, 2020 and May 9, 2020. The employer accurately reported the claimant worked no hours and earned no wages for the four weeks between April 5, 2020 and May 2, 2020. However, the employer erred when reporting hours worked and wages earned during the week that ended April 4, 2020 and the week that ended May 9, 2020. The employer erroneously reported the claimant had worked 40 hours both weeks and had earned \$854.00 in wages both weeks. The employer concedes that the employer erred when providing wage and hour information for the weeks ending August 4, 2020 and May 9, 2020. The employer agrees the Time Reports provided by the claimant are accurate.

In January 2023, Iowa Workforce Development used the wage information provided the employer to redetermine the claimant's eligibility for benefits during the six weeks in question. Based on the erroneous information the employer provided for the weeks ending April 4, 2020 and May 9, 2020, IWD concluded the claimant's wages for the weeks that ended April 4, 2020 and May 9, 2020 exceeded her weekly benefit amount plus \$15.00, that the claimant was not eligible for benefits for those weeks, and that the claimant was overpaid regular and FPUC benefits for those two weeks.

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.

[Emphasis added.]

Iowa Code section 96.5(7)(a-c), regarding deduction of vacation pay from unemployment insurance benefits, provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

7. Vacation pay.

a. When an employer makes a payment or becomes obligated to make a payment to an individual for vacation pay, or for vacation pay allowance, or as pay in lieu of vacation, such payment or amount shall be deemed "wages" as defined in section 96.1A, subsection 41, and shall be applied as provided in paragraph "c" hereof.

b. When, in connection with a separation or layoff of an individual, the individual's employer makes a payment or payments to the individual, or becomes obligated to make a payment to the individual as, or in the nature of, vacation pay, or vacation pay allowance, or as pay in lieu of vacation. The amount of a payment or obligation to make payment, is deemed "wages" as defined in section 96.1A, subsection 41, and shall be applied as provided in paragraph "c" of this subsection 7.

c. Of the wages described in paragraph "a" or paragraph "b", a sum equal to the wages of such individual for a normal workday shall be attributed to, or deemed to be payable to the individual with respect to, the first and each subsequent workday in such period until such amount so paid or owing is exhausted, not to exceed five workdays. Any individual receiving or entitled to receive wages as provided herein shall be ineligible for benefits for any week in which the sums equal or exceed the individual's weekly benefit amount. If the amount is less than the weekly benefit amount of such individual, the individual's benefits shall be reduced by such 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.

During the week that ended April 4, 2020, the claimant was partially unemployed and eligible for benefits, provided she met all other eligibility requirements. The employer had work for the claimant on Monday, Tuesday and two hours of work on Wednesday, but did not have the claimant's regular full-time work available. The claimant remained available for work for the majority of the week, meaning that part of the week other than the Monday and Tuesday when she used vacation. During that week, the claimant earned \$39.40 in wages, less than one-fourth of the \$445.00 weekly benefit amount. Because the earned wages were less than one-fourth of the weekly benefit amount, the IWD computer system ignored those wages when initially calculating the claimant's weekly benefit amount for that week. The entire amount of the vacation pay attributable to that week, \$295.00 (rounded) was deductible from the \$445.00 weekly benefit amount for that week, meaning the claimant was eligible for \$150.00 in regular benefits for that week, rather than the \$152.00 that IWD paid for that week. Accordingly, the claimant was overpaid \$2.00 in regular benefits for the week that ended April 4, 2020. The claimant made a good faith estimate of her vacation pay for that week.

During the four weeks between April 5, 2020 and May 2, 2020, the claimant was temporarily laid off and eligible for benefits, provided she met all other eligibility requirements. The claimant was not overpaid benefits for any of those four weeks.

During the week that ended May 9, 2020, the claimant was partially unemployed. The claimant was available for her regular full-time work, but the employer only had 23 hours of work for the claimant. The claimant earned wages totaling \$453.10, which was obviously greater than one-fourth of the \$445.00 unemployment insurance weekly benefit amount, but less than that amount plus \$15.00. That portion of the wages that exceeded one-fourth of the weekly benefit amount was deductible from unemployment insurance benefits. Thus, that portion of the

\$453.00 (rounded) that exceeded \$111.00 (rounded) was deductible from unemployment insurance benefits. $\$453.00 - \$111.00 = \$342.00$. Thus, \$342.00 in earned wages were deductible from the claimant's benefit eligibility that week, leaving the claimant eligible for \$103.00 in regular benefits, provided the claimant was otherwise eligible. Because IWD paid the claimant \$106.00 in regular benefits for that week, the claimant was overpaid \$3.00 in regular benefits for that week. The claimant had made a good faith estimate of her wages for that week.

DECISION:

The January 20, 2023 (reference 01) decision is MODIFIED in favor of the claimant as follows:

During the week that ended April 4, 2020, the claimant was partially unemployed, eligible for \$150.00 in regular benefits, provided she was otherwise eligible, and overpaid \$2.00 in regular benefits.

During the four weeks between April 5, 2020 and May 2, 2020, the claimant was temporarily laid off and eligible for benefits, provided she met all other eligibility requirements. The claimant was not overpaid benefits for any of those four weeks.

During the week that ended May 9, 2020, the claimant was partially unemployed, eligible for \$103.00 in regular benefits, provided she was otherwise eligible, and overpaid \$3.00 in regular benefits.

The claimant must repay the combined \$5.00 overpayment of regular benefits for the two weeks ending April 4, 2020 and May 9, 2020.



James E. Timberland
Administrative Law Judge

February 21, 2023
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>.

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.