

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

ANGIE L BOYSE
Claimant

YMCA OF WASHINGTON
Employer

APPEAL 22A-UI-15170-S2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (1)

Iowa Code § 96.3(7) – Recovery of Overpayment of Benefits
Iowa Code § 96.19(38) – Total and Partial Unemployment

STATEMENT OF THE CASE:

The claimant appealed a representative's decision dated July 8, 2022, (reference 01) that concluded the claimant was overpaid \$900.00 in unemployment insurance benefits due to a failure to report wages earned from YMCA of Washington. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on August 23, 2022. Claimant Angie L. Boyse participated personally. Employer YMCA of Washington participated through director Amy Schulte. The administrative law judge took official notice of the administrative record.

ISSUE:

The issue is whether the claimant is 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 March 29, 2020, and reopened the claim effective June 28, 2020, after she was separated from her full-time employer, the University of Iowa. Claimant continued working for YMCA of Washington in a part-time capacity. Claimant's weekly benefits amount (WBA) was \$518.00. Claimant filed weekly continued claims for the period of June 28, 2020, and October 3, 2020. During this period, claimant was partially unemployed.

IWD conducted an audit of the claim and contacted employer to verify claimant's wages earned with employer, YMCA of Washington. (See fact-finding documents). A review of the administrative file reflects claimant did not report the wages earned from this employer. Claimant did not report the earnings because she was laid off from her full-time position and did not understand she needed to report earnings from her part-time position. Because the claimant did not accurately report her wages during this same period, an overpayment of \$900.00 was determined by IWD (See fact-finding documents). Claimant did not dispute the wages reported by employer.

The agency established the overpayment based upon the following wages and payments made to the claimant: (See fact-finding documents)

WEEK ENDING	WAGES REPORTED	WAGES EARNED	BENEFITS PAID	BENEFITS ENTITLED	OVERPAYMENT
08/22/20	0.00	286.00	518.00	361.00	157.00
08/29/20	0.00	286.00	518.00	361.00	157.00
09/05/20	0.00	264.00	518.00	383.00	135.00
09/12/20	0.00	134.00	518.00	384.00	134.00
09/19/20	0.00	242.00	518.00	405.00	113.00
09/26/20	0.00	264.00	518.00	383.00	135.00
10/03/20	88.00	198.00	518.00	449.00	69.00
				Net Total:	900.00

REASONING AND CONCLUSIONS OF LAW:

For the following reasons the administrative law judge concludes the claimant was overpaid unemployment insurance benefits.

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.

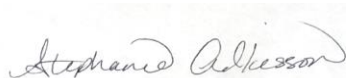
b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include 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 was partially unemployed and entitled to partial benefits. However, she failed to correctly report wages earned from YMCA during between August 16, 2020, and October 3, 2020. Consequently, claimant was able to collect both wages and full unemployment insurance benefits each week. As a result, the claimant was overpaid benefits in the amount of \$900.00, to which she was not entitled. Those benefits must be repaid.

DECISION:

The decision of the representative dated July 8, 2022, (reference 01) is affirmed. Claimant was overpaid regular state unemployment insurance benefits in the amount of \$900.00 to which she was not entitled, and those benefits must be recovered in accordance with the law.



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
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 adquiriera 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.