

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

ALAN CERVANTES
Claimant

APPEAL 22A-UI-17846-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 01/02/22
Claimant: Appellant (1)**

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Code § 96.5(5) – Payment – Incentive Pay
Iowa Code § 96.1A(37) – Total, Partial, and Temporary Unemployment

STATEMENT OF THE CASE:

On October 10, 2022, Alan Cervantes (claimant) appealed an unemployment insurance decision dated September 30, 2022, reference 01, that concluded they were overpaid \$601.00 in unemployment insurance benefits. A telephone hearing was held on November 1, 2022. The claimant participated personally. Hawkins Construction (employer) participated through Tim Mollner, HR Coordinator. No exhibits were offered into the record. The administrative law judge took official notice of the claimant’s claim history.

ISSUES:

Did the claimant fail to report income earned while claiming benefits?
Was the claimant unemployed during the week ending March 19, 2022?
Has the claimant been overpaid benefits?

FINDINGS OF FACT:

The claimant filed a new claim for unemployment insurance benefits with an effective date of January 2, 2022, due to a seasonal layoff with the employer. The claimant’s weekly benefit amount (WBA) is \$601.00. The claimant filed for and received a total of \$601.00 in regular unemployment insurance benefits for the week ending March 19.

The employer offers its employees an incentive of \$1,500.00 for completing an English as a Second Language (ESL) class because it is helpful to have individuals on the work site able to communicate more easily. After filing the unemployment claim effective January 2, the claimant completed an ESL class. During the week of March 13 through March 19, the employer paid him the \$1,500.00 incentive for completing the class. The claimant did not report the incentive pay when filing his weekly claim for unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant received wages in the form of incentive pay which was not reported, he was not unemployed based on the wages earned, and he was overpaid unemployment insurance benefits, which must be repaid.

1. Did the claimant fail to report income earned while claiming benefits?

Iowa Code section 96.5(5) provides, provides in relevant part:

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

5. Other compensation.

a. For any week with respect to which the individual is receiving or has received payment in the form of any of the following:

(1) Wages in lieu of notice, separation allowance, severance pay, or dismissal pay.

(2) Compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States.

Iowa Admin. Code r. 871-24.13(2)c provides:

2. Deductible payments from benefits. The following payments are considered as wages and are deductible from benefits on the basis of the formula used to compute an individual's weekly benefit payment as provided in rule 871-24.18(96):

c. Incentive pay. However, the incentive pay is only deductible when based on service performed by the individual during the period in which the individual is also claiming benefits.

The claimant attended ESL classes when he was laid off beginning on or about January 2, 2022, and he is now able to more easily communicate in English which benefits the employer. The employer paid the claimant \$1,500.00 for the services he performed while claiming unemployment insurance benefits. Therefore, the incentive pay is considered wages for purposes of unemployment insurance benefits.

The next issue is whether the claimant is partially unemployed and entitled to partial benefits.

II. Was the claimant unemployed during the week ending March 19, 2022?

Iowa Code section 96.1A(37)b(1) provides:

"Total and partial unemployment".

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.

Iowa Code section 96.3(3) provides:

3. Partial unemployment. An individual who is partially unemployed in any week as defined in section 96.1A, subsection 37, paragraph "b", and who meets the conditions of eligibility for benefits shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. The benefits shall be rounded to the lower multiple of one dollar.

Iowa Admin. Code r. 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.

Under Iowa Employment Security Law, an individual must be unemployed to be eligible for unemployment insurance benefits. Partial unemployment occurs when a person works and earns wages less than their weekly benefit amount plus fifteen dollars. In this case, the claimant earned more than \$616.00, or the claimant's WBA plus fifteen dollars, in wages for the week ending March 19 and cannot be considered unemployed. Therefore, he is not entitled to unemployment insurance benefits during that week.

III. Has the claimant been overpaid benefits?

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.

Since the claimant earned wages in excess of his WBA plus fifteen dollars and was not unemployed, the claimant was overpaid \$601.00 in regular unemployment insurance benefits for the week ending March 19, 2022. The benefits must be repaid, even when the claimant acts in good faith and is not otherwise at fault.

DECISION:

The unemployment insurance decision dated September 30, 2022, reference 01, is AFFIRMED. The claimant earned wages in excess of his WBA plus fifteen dollars, and he cannot be considered unemployed during the week ending March 19, 2022. Therefore, he was overpaid \$601.00 in regular unemployment insurance benefits, which must be repaid.



Stephanie R. Callahan
Administrative Law Judge

December 5, 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 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.