

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

THOMAS R HARVEY
Claimant

ADECCO USA INC
Employer

APPEAL 22A-UI-13708-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/30/19
Claimant: Appellant (4)**

Iowa Code § 96.3(7) – Overpayment of Benefits
Iowa Code § 96.5(5) – Deductions
Iowa Code § 96.19(38) – Total, Partial, Temporary Unemployment

STATEMENT OF THE CASE:

On June 3, 2022, the claimant's wife, Lori Harvey, filed appeal from the June 1, 2022, (reference 02) unemployment insurance decision that found the claimant, Thomas Harvey, had been overpaid \$467.00 because he failed to report wages for the week ending August 24, 2019. Ms. Harvey explained that Mr. Harvey passed away on April 14, 2022 and provided a death certificate confirming that fact.

After due notice was issued, a telephone conference hearing was set for July 22, 2022. The claimant was represented by Ms. Harvey. The employer did not participate. The administrative law judge took official notice of the agency records, including documents generated at factfinding.

ISSUES:

Whether the claimant inaccurately reported for the week ending August 24, 2019?

Whether the claimant is overpaid benefits?

Whether Iowa Workforce Development Department can recoup the overpayment from his wife, Lori Harvey?

FINDINGS OF FACT:

Having heard the testimony and having examined the evidence in the record, the administrative law judge finds:

The claimant filed a claim for unemployment insurance benefits with an initial date of June 30, 2019. His weekly benefit amount was \$467.00 on that claim. The claimant earned \$720.00 for the week ending August 24, 2019. The claimant reported he earned \$0.00 for the week in question. The claimant also reported \$0.00 earned for the preceding weeks ending July 6, 2019, July 13, 2019, July 20, 2019, July 27, 2019, August 3, 2019.

On February 5, 2020, Iowa Workforce Development Department sent a request for wage records to Adecco USA Inc beginning with the week ending July 6, 2019 and ending the week ending August 24, 2019. Adecco USA Inc responded to this request through its third-party servicer, Equifax Workforce Solutions, but only for the week ending August 24, 2019. No information was provided regarding any of the other weeks for this request. For the week ending August 24, 2019, it asserted the claimant earned \$720.00 in insured wages for that week.

The claimant and Ms. Harvey were married on May 16, 2021.

After filing her appeal, Ms. Harvey reached out to Unemployment Insurance Bureau Chief Christina Steen. Ms. Steen told the claimant that given the circumstances the overpayment decision would be dismissed. No subsequent agency action was taken by the Benefits Bureau to invalidate the overpayment, so the matter was set for hearing.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant inaccurately reported his wages and was overpaid benefits; however, Iowa Workforce Development Department lacks the legal authority to collect this overpayment from his wife, Lori Harvey.

Iowa Code section 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 section 96.4(3)a provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. a. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed,

while employed at the individual's regular job, as defined in section 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The claimant earned \$720.00 for the week ending August 24, 2019. This exceeds his weekly benefit amount of \$465.00 plus \$15.00. As a result, the claimant was not entitled to benefits for that week.

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.**

The claimant received \$465.00 in benefits for the week ending August 24, 2019. The claimant was not entitled to these benefits.

As stated in the findings of fact, the Benefits Bureau did not invalidate the overpayment or take any other subsequent agency action after Ms. Harvey provided information stating that the claimant was deceased, and she had no legal relationship to him at the time he received the funds. The Benefits Bureau did not provide a legal argument or any information suggesting that it believed these funds could be recouped from Ms. Harvey.

The administrative law judge starts with the rule expressed above in Iowa Code § 96.3(7). That code section authorizes the department to recover benefits owed on an overpayment in two different ways, but both of those ways limit the scope of recovery to the individual claiming benefits.

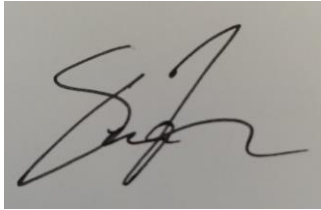
Iowa Admin. Code r 871-25.14(96) states if benefits are due to a deceased claimant, they are payable to the person who has been issued letters or testamentary or of administration pursuant to an application filed within 30 days of the claimant's death. In the event no one applies for the letters, the benefits will be paid to the next of kin as outlined in the rule and pursuant to other procedural considerations. *Id.* As the claimant in this case was disqualified from receiving benefits, there are no benefits currently owed to the claimant. The administrative law judge notes this rule does not provide authority from recovering overpayment from next of kin.

In the absence of any authority either in Iowa Code section 96.3(7) or Iowa Admin. Code r 871-25.14(96) or any argument from the Benefits Bureau claiming authority to recoup this overpayment from Ms. Harvey, the administrative law judge finds such recovery would be inappropriate. This is especially the case because at the time the debt was accrued, Ms. Harvey had absolutely no legal relationship to the claimant whatsoever to assume his debts.

The claimant was overpaid \$467.00. However, Iowa Workforce Development Department lacks the legal authority to recover this overpayment from Ms. Harvey.

DECISION:

The June 1, 2022, (reference 02) unemployment insurance decision issuing an overpayment in the amount of \$467.00 is modified in favor of the appellant. The claimant was overpaid \$467.00, but Iowa Workforce Development Department lacks the legal authority to obtain those funds from Ms. Harvey.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is written over a light gray rectangular background.

Sean M. Nelson
Administrative Law Judge

__September 21, 2022__
Decision Dated and Mailed

smn/ar

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. *There is no filing fee to file an appeal with the Employment Appeal Board.*

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 file a petition for judicial review in district court.

2. If you do not file 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 www.iowacourts.gov/efile. *There may be a filing fee to file the petition in District Court.*

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. *No hay tarifa de presentación para presentar una apelación ante la Junta de Apelación de Empleo.*

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 no presenta una apelación de la decisión del juez ante la Junta de Apelación de Empleo dentro de los quince (15) días, la decisión se convierte en una acción final de la agencia y tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días. Puede encontrar información adicional sobre cómo presentar una petición en www.iowacourts.gov/efile. *Puede haber una tarifa de presentación para presentar la petición en el Tribunal de Distrito.*

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.