

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MATT MULHOLLAND
Claimant

ALLEGIS GROUP INC
Employer

APPEAL 22A-UI-06253-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/04/21
Claimant: Appellant (1)**

Iowa Code § 96.3(7) – Overpayment of Benefits
Iowa Code § 96.5(5) – Deductions
Iowa Code section 96.1A(37) – Total, Partial, Temporary Unemployment

STATEMENT OF THE CASE:

The claimant, Matt Mulholland, filed a timely appeal from the February 4, 2022, (reference 04) unemployment insurance decision that found he had been overpaid \$443.00 between April 4, 2021 and April 17, 2021, due to his failure to report wages earned during those weeks. After due notice was issued, a telephone conference hearing was set for April 20, 2022. Claimant participated. The employer did not participate. Exhibits D-1 and D-2 were received into the record. The administrative law judge took official notice of the agency records, including documents generated at factfinding.

ISSUES:

Whether the claimant's appeal is timely? Whether there are reasonable grounds to consider his appeal otherwise timely?

Should the settlement agreement the claimant received be considered as earnings from April 4, 2021 and April 17, 2021?

FINDINGS OF FACT:

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

The claimant filed for unemployment insurance benefits effective April 4, 2021. The claimant's weekly benefit amount is \$326.00. The table below shows the weeks the claimant made weekly claims, the earnings he reported and what he was paid in benefits for each week:

	Earnings	Date Issued	How Paid	Benefits Paid
04/10/21	\$290.00	05/24/21	Direct Deposit	\$117.00
04/17/21	\$000.00	05/24/21	Direct Deposit	\$326.00
04/24/21	\$350.00	05/24/21	Direct Deposit	\$0.00
05/01/21	\$350.00	05/24/21	Direct Deposit	\$0.00
05/08/21	\$450.00	05/24/21	Direct Deposit	\$0.00

The claimant did not make weekly claims for the weeks ending May 15, 2021, May 22, 2021 and May 29, 2021.

In response to a request regarding the claimant's wages earned during this period, Allegis Group Inc. provided the following earnings information.

	Earnings
04/10/21	\$570.00
04/17/21	\$454.95

During the hearing, the claimant testified that he was not recalled from a layoff until May 31, 2021. The claimant could not explain how he reported earnings during May if he was awaiting recall from a layoff.

The following section of the findings of facts describes the findings necessary to resolve the timeliness issue:

A disqualification decision was mailed to the claimant's address of record on February 4, 2022. (Exhibit D-1) The claimant did not receive the decision until March 5, 2022. After a conversation with a representative of Iowa Workforce Development Department, the claimant was sent this decision on March 12, 2022. The claimant appealed within ten days of his receipt of the decision. (Exhibit D-2)

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the claimant's appeal is timely. The administrative law judge determines it is.

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of issuance of the notice of the filing of the claim to protest payment of benefits to the claimant. All interested parties shall select a format as specified by the department to receive such notifications. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was issued, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter

taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received during the appeal period. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant timely appealed the decision within ten days of receiving it on March 12, 2022.

For the reasons that follow, the administrative law judge concludes the claimant must repay the \$443.00 he received in unemployment insurance benefits from April 4, 2021 and April 17, 2021 because he was not partially unemployed for those weeks.

Iowa Code section 96.5(5) provides:

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.

(3) A governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment made under a plan maintained or contributed to by a base period or chargeable employer where, except for benefits under the federal Social Security Act or the federal Railroad Retirement Act of 1974 or the corresponding provisions of prior law, the plan's eligibility requirements or benefit payments are affected by the base period employment or the remuneration for the base period employment. However, this subparagraph shall only be applicable if the base period employer has made one hundred percent of the contribution to the plan.

b. Provided, that if the remuneration is less than the benefits which would otherwise be due under this chapter, the individual is entitled to receive for the week, if otherwise eligible, benefits reduced by the amount of the remuneration. Provided further, if benefits were paid for any week under this chapter for a period when benefits, remuneration or compensation under paragraph "a", subparagraph (1), (2), or (3), were paid on a retroactive basis for the same period, or any part thereof, the department shall recover the excess amount of benefits paid by the department for the period, and no employer's account shall be charged with benefits so paid. However, compensation for service-connected disabilities or compensation for accrued leave based on military service by the beneficiary with the armed forces of the United States, irrespective of the amount of the benefit, does not disqualify any individual otherwise qualified from any of the benefits contemplated herein. A deduction shall not be made from the amount of

benefits payable for a week for individuals receiving federal social security pensions to take into account the individuals' contributions to the pension program.

Iowa Code section 96.1A(37) provides:

Totally unemployed", "partially unemployed", and "temporarily unemployed.

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.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using his own common sense and experience, the administrative law judge finds the employer's records regarding wages paid more credible. That is because as observed in the findings of fact, the claimant's allegations are internally inconsistent. The claimant reported earnings when he made his weekly claims throughout a great deal of April and May 2021. This is inconsistent with the idea he did not earn any money because he was awaiting recall from a layoff.

The claimant earned \$570.00 for the week ending April 10, 2022. The claimant earned \$454.95 for the week ending April 17, 2022. These earnings exceed \$341.00 or his weekly benefit amount of \$326.00 plus \$15.00. As a result, the claimant is not entitled to benefits he received during this period.

Iowa Code section 96.3(7)a-b, as amended in 2008, provides:

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. The employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. This prohibition against relief of charges shall apply to both contributory and reimbursable employers.

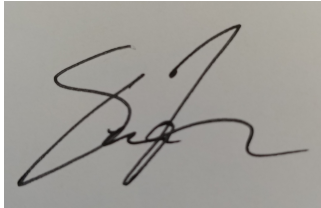
(b) However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal **regarding the issue of the individual's separation from employment.**

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant received \$443.00 in regular unemployment insurance benefits for the weeks ending April 10, 2021 and April 17, 2021, for which he was not entitled. The claimant must repay these benefits.

DECISION:

The February 4, 2022, (reference 02) unemployment insurance decision is affirmed. The claimant has been overpaid \$443.00 in regular unemployment insurance benefits, which must be repaid.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is displayed within a rectangular frame.

Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

May 12, 2022

Decision Dated and Mailed

smn/ac