

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

HAZIM LIDAN
Claimant

MG MASONRY INC
Employer

APPEAL 22A-UI-18336-CS

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/06/20
Claimant: Appellant (5)**

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Code § 96.19(38) – Total and Partial Unemployment
Iowa Code § 96.5(5)-Compensation

STATEMENT OF THE CASE:

On October 25, 2022, the claimant/appellant filed an appeal from the October 18, 2022, (reference 01) unemployment insurance decision that concluded the claimant was overpaid unemployment insurance benefits in the amount of \$1,024.00 as a result of incorrectly reported wages with WR Hospitality LLC. The parties were properly notified of the hearing. An in person hearing was held in Des Moines, Iowa on November 15, 2022. The hearing was held together with appeal 22A-UI-18337-CS and combined into one record. The claimant participated through International Translation Service, Bosnian Interpreter, Milena Krstajic. Nina Vilenica and Fadila Lidan were called as witnesses. The employer did not appear for the hearing or request to appear by telephone. Administrative notice was taken of the claimant's unemployment insurance benefits records. Exhibits D1 and D2 were admitted into the record.

ISSUES:

- I. Is claimant totally, partially or temporarily unemployed?
- II. Did the claimant correctly report wages earned?
- III. Was the claimant was overpaid benefits?

FINDINGS OF FACT:

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

Claimant filed an initial claim for unemployment insurance benefits effective September 6, 2020. Claimant's weekly benefit amount is \$512.00. (Exhibit D2, pg. 1). Claimant works as a Laborer earning \$30.00 per hour. Claimant was temporarily on layoff from the employer in December 2020. Claimant began receiving benefits the week ending December 19, 2020, and received benefits each week thereafter through February 20, 2021. (Exhibit D2, pg. 2). Each week

claimant reported \$0.00 in wages. For the first quarter of 2021 claimant earned a gross total of \$8,958.00 in wages from employer MG Masonry Inc.

IWD send MG Masonry Inc. a request of wage records for the first quarter of 2021. (Exhibit D1). For the week of January 3, 2021, through January 9, 2021, claimant reported he did not earn any wages and he received his full benefit amount. (Exhibit D2 and KCCO). The employer reported claimant worked 40 hours the week of January 3, 2021, through January 9, 2021. (Exhibit D1). The employer reported claimant earned \$1,200.00 in wages. Iowa Workforce Development (IWD) mistakenly decided claimant was overpaid due to incorrectly reported wages with WR Hospitality LLC. Claimant never worked for the employer WR Hospitality, LLC. However, any wages reported were due to claimant's employment with MG Masonry Inc. (See Exhibit D1). Claimant is paid by his employer through physical paychecks and not through direct deposits.

For the week of January 10, 2021, through January 16, 2021, claimant reported he did not earn any wages and he received his full benefit amount. (Exhibit D2 and KCCO). The employer reported claimant worked 39 hours the week of January 10, 2021, through January 16, 2021. (Exhibit D1). The employer reported claimant earned \$1,170.00 in wages.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes:

Iowa Code § 96.4(3) provides:

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

3. 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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Code § 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.

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.

Iowa Code section 96.3.(7) states:

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 decision in this case rests, at least in part, on the credibility of the witnesses. 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, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer's response to request of wage records to be more credible than the claimant's recollection of whether he was paid from January 3, 2021, through January 16, 2021.

Claimant is only entitled to benefits if he was totally or partially unemployed. For the weeks of January 3, 2021, through January 16, 2021, employer reported that he earned over his weekly benefit amount. See Exhibit D1. As a result claimant received two weeks of full benefits for a grand total of \$1,024.00, that he was not entitled to receive. The administrative law judge concludes that claimant has been overpaid UI in the gross amount of \$1,024.00 for the two-week period between January 3, 2021, through January 16, 2021. Claimant is required to repay those benefits.

DECISION:

The October 18, 2022 (reference 01) unemployment insurance decision is modified with no change in effect. Claimant has been overpaid regular unemployment insurance benefits in the gross amount of \$1,024.00 for the two-week period between January 3, 2021, through January 16, 2021, for failing to report his wages with MG Masonry Inc. These benefits must be repaid.



Carly Smith
Administrative Law Judge

November 17, 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