

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

KAYA D SMITH

Claimant

APPEAL 22A-UI-07094-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SUCCESSFUL LIVING SUPPORTIVE

Employer

OC: 04/26/20

Claimant: Appellant (4)

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, Kaya D Smith, filed a timely appeal from the May 17, 2022, (reference 03) unemployment insurance decision that found she had been overpaid \$1,426.00 between September 27, 2020 and December 5, 2020 due to her failure to report wages earned during that period. After due notice was issued, a telephone conference hearing was set for May 18, 2022. The claimant participated. The employer participated through Human Resources Director Jeff Rodgers, Executive Director Robert Goedken, and Finance Director Ashley Gillette. The administrative law judge postponed this first hearing because the wage documents had not been sent the claimant.

A rescheduled hearing was conducted on June 14, 2022. It was conducted jointly with 22A-UI-07099-SN-T, 22A-UI-07101-SN-T, 22A-UI-07104-SN-T, 22A-UI-07107-SN-T. The claimant participated. The employer participated through Mr. Rodgers, Mr. Goedken, and Ms. Gillette. Official notice was taken of the administrative file. Exhibits 1 and 2 were received into the record. The claimant disconnected after the exhibits were admitted. The administrative law judge left a message for her to reconnect before the completion of testimony. The claimant did not reconnect.

ISSUES:

Whether the claimant failed to accurately report her wages from September 27, 2020 and December 5, 2020?

Whether the claimant has been overpaid benefits?

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 26, 2020. The claimant's weekly benefit amount was \$340.00. The table below shows the weeks the claimant made weekly claims, her earnings and what she was paid in benefits for each week:

	Earnings	Date Issued	How Paid	Benefits Paid
10/03/20	\$389.89	09/19/20	Direct Deposit	\$125.00
10/10/20	\$421.94	04/19/20	Direct Deposit	\$125.00
10/17/20	\$421.94	04/26/20	Direct Deposit	\$125.00
10/24/20	\$428.15	05/03/20	Direct Deposit	\$125.00
10/31/20	\$421.94	05/10/20	Direct Deposit	\$125.00
11/07/20	\$421.94	05/17/20	Direct Deposit	\$125.00
11/14/20	\$000.00	05/24/20	Direct Deposit	\$175.00
11/21/20	\$000.00	06/01/20	Direct Deposit	\$340.00
11/28/20	\$248.20 (V)	06/07/20	Direct Deposit	\$340.00
12/05/20	\$440.56 / \$142.72 (V)	12/10/20	Direct Deposit	\$340.00

Finance Director Ashley Gillette gave testimony confirming her responses to the wage audit sent to the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant failed to accurately report her wages from September 27, 2020 through December 5, 2020.

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.

The claimant is not entitled to benefits for any week that her earnings exceed her weekly benefit amount of \$340.00 plus \$15.00 or \$355.00. As a result, the claimant is not entitled to the benefits she received for the weeks ending October 3, 2020, October 10, 2020, October 17, 2020, October 24, 2020, October 31, 2020, November 7, 2020, and December 5, 2020. Benefits are denied for these weeks.

The claimant earned less than this amount during the weeks ending November 14, 2020, November 21, 2020, and November 28, 2020. The analysis will continue to evaluate whether her earnings were properly deducted under Iowa Code section 96.5(5) for these weeks she was partially unemployed.

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 96.5(5) stands for the idea that if the claimant is eligible, she is afforded an allowance of one quarter her weekly benefit amount. This is called her allowance. The claimant's allowance is \$85.00. The claimant's gross total earnings for that week are reduced by the allowance to come up with the amount deducted from the claim. Then the claimant's weekly benefit amount of \$340.00 is reduced by the deductible. If the claimant earned vacation pay, then generally that is deducted for the full amount.

The claimant did not have any earnings for the weeks ending November 14, 2020 and November 21, 2020. As a result, the claimant is entitled to her full weekly benefit amount for these weeks.

The claimant earned \$248.20 in vacation pay. This should be deducted from her weekly benefit amount for that week. The claimant is eligible for \$91.80 in regular benefits for that week.

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.

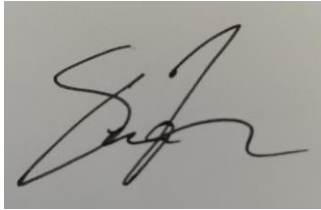
The claimant is not entitled to the benefits she received for the weeks ending October 3, 2020, October 10, 2020, October 17, 2020, October 24, 2020, October 31, 2020, November 7, 2020, and December 5, 2020. The claimant claimed and received a total of \$1090.00 during that period. She is not entitled to these benefits.

The claimant is eligible for benefits for the weeks ending November 14, 2020 and November 21, 2020.

The claimant received her full-weekly benefit amount for the week ending November 28, 2020. The claimant was only entitled to receive \$91.80 in regular benefits for that week. The claimant was overpaid \$248.20 for that week.

DECISION:

The February 14, 2021, (reference 03) unemployment insurance decision is modified in favor of the claimant. The claimant has been overpaid \$1,372.20 in regular unemployment insurance benefits, which must be repaid.

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 8, 2022
Decision Dated and Mailed

smn/sa

Note to Claimant: Overpayment waivers of federal benefits are available. A claimant can apply for a waiver regarding federal benefits received to <https://www.iowaworkforcedevelopment.gov/application-overpayment-waiver>.

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.