

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

DORLISA D SMITH
Claimant

MAHASKA CO HOSPITAL
Employer

APPEAL 22A-UI-09412-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/10/20
Claimant: Appellant (1)

Iowa Code § 96.3(7) - Recovery of Benefit Overpayment
Iowa Code § 96.3(7) - Recovery of Benefit Overpayment
Iowa Code § 96.19(38) - Total, Partial and Temporary Unemployment
Iowa Code § 96.5(5) - Payment - Other Compensation
Iowa Admin. Code r. 871-24.18 - Wage-Earnings Limitation

STATEMENT OF THE CASE:

Dorlisa Smith, claimant/appellant, appealed the April 11, 2022, (reference 06) unemployment insurance decision finding claimant was overpaid Lost Wage Assistance Payments (LWAP) benefits in the amount of \$300.00 for 1 week between 08/30/2020 and 09/05/2020, due to failing to report or incorrectly reporting wages earned. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for May 27, 2022, at 8:05AM. The following hearings were held together as part of a consolidated hearing: Appeals 22A-UI-09411-DH-T, and 22A-UI-09412-DH-T. Claimant personally participated. Employer, Mahaska County Hospital, participated through Starla Clemons, human resources supervisor. Judicial notice was taken of the administrative record, including claimant's appeal and attachments, employer's wage report, pay stub for pay period ending 09/12/20, DBIN, and Claimant's exhibit C-1 (hours scheduled September 2020).

ISSUES:

Is the claimant overpaid LWAP benefits?
Was the claimant totally, partially, or temporarily unemployed?
Did the claimant correctly report wages earned?
Is the claimant eligible for benefits based upon wages earned?

FINDINGS OF FACT:

Having heard the testimony and reviewed the evidence in the record, the undersigned finds:

In companion appeal Appeals 22A-UI-09411-DH-T, the underlying decision finding claimant was overpaid regular unemployment benefits in the amount of \$1,036.00 for 2 weeks between 08/30/2020 and 09/12/2020, due to failing to report wages earned was affirmed. Because claimant was not eligible for regular unemployment benefits for these two weeks, claimant is also not entitled to LWAP benefits in this time frame.

Claimant filed a claim for unemployment insurance benefits with an original claim date of 05/10/20. Claimant submitted a claim for the benefit weeks between 08/30/20 and 09/12/20. The below table shows the benefit week ending for the wages reported by claimant and employer that conflicted and resulted in an overpayment. The employer's report is for wages paid.

Benefit Week Ending	Wages Reported By		Unemployment Benefits		Underpaid	Overpaid
	Claimant	Employer	Paid	Entitled		
09/05/20	\$0.00	\$939.42	\$518.00	\$0.00		\$518.00
09/12/20	\$0.00	\$945.75	\$518.00	\$0.00		\$518.00
Total	\$0.00	\$1,885.17	\$1,036.00			\$1,036.00

Claimant was employed by employer as a fulltime polysomnographic technician with a varied schedule. Claimant agrees with the hours and wages reported by employer and acknowledges she did not report her wages correctly. She did not report any wages for the two weeks in question and reported two weeks of wages all on the week ending 09/19/20. Claimant is paid every two weeks. The pay stub for pay period ending 09/12/20, which covers the two weeks in question, shows a gross total wage of \$1885.45. The 38 cents difference does not impact the outcome. Claimant, by not reporting her wages was overpaid \$1,036.00 in regular unemployment benefits.

Claimant filed a claim for unemployment insurance benefits with an original claim date of 05/10/2020. Claimant was paid \$300.00 in LWAP benefits for the benefit week ending 09/05/20.

Claimant, by not reporting her wages was overpaid \$300.00 in LWAP benefits.

REASONING AND CONCLUSIONS OF LAW:

An issue in this case is whether the claimant failed to report wages. It is found that claimant failed to accurately report wages as reflected in the above table for the time frames set forth.

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.

Here, claimant's reported wages received versus what employer reports as payment of wages, differed, as reflected in the table in the fact finding section. This resulted in an overpayment of \$1,036.00 in regular unemployment benefits as she was disqualified for regular benefits for these weeks. Since she was disqualified from regular unemployment benefits, she was also disqualified from LWAP benefits. Therefore, she was overpaid \$300 in LWAP benefits.

The next issue in this case is whether the claimant is totally, partially, or temporarily unemployed. It is found that she was not unemployed for the week in question.

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

Claimant does not meet any of the definitions set forth above, working 36 hours for the week and earning more than her weekly benefit amount plus \$15. Claimant was not unemployed.

The last issues are whether claimant was eligible for benefits/overpaid benefits which are to be repaid. Claimant was not eligible for regular unemployment benefits for the weeks in question and this also makes her not eligible for LWAP benefits that were paid as a result of failing to report or incorrectly reporting her wages. This resulted in an overpayment of \$300.00 in LWAP benefits that are to be repaid.

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.

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 deductions 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.

This rule is intended to implement Iowa Code § 96.3, 96.4 and 96.19(38).

Since claimant was not eligible for LWAP benefits for the week in question, as addressed above, the claimant was overpaid LWAP benefits in the amount of \$300.00 and repayment is required.

This decision determines you have been overpaid LWAP benefits under the CARES Act. If you disagree with this decision, you may file an appeal by following the instructions set forth at the end of this decision. Additionally, instructions for requesting a **waiver** of the CARES Act overpayments can be found at <https://www.iowaworkforcedevelopment.gov/federal-unemployment-insurance-overpayment>. If this decision becomes final and you are not eligible for a waiver, you will have to repay the benefits you received.

DECISION:

The April 11, 2022, (reference 06) unemployment insurance decision is **AFFIRMED**. Claimant failed to correctly report wages and was overpaid LWAP benefits in the amount of \$300.00 for the week ending 09/05/20 that shall be repaid.



Darrin T. Hamilton
Administrative Law Judge

September 26, 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.