

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

SERGIO L. MALDONADO
Claimant

APPEAL 22A-UI-16119-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GRIFFEN CONSTRUCTION LLC
Employer

OC: 12/27/20
Claimant: Appellant (1)

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 August 15, 2022, the claimant/appellant filed an appeal from the August 8, 2022, (reference 04) unemployment insurance decision that concluded the claimant was overpaid unemployment insurance benefits in the amount of \$244.00 as a result of incorrectly reported wages with Griffen Construction LLC. The parties were properly notified of the hearing. A telephone hearing was held on September 15, 2022. The hearing was held together with appeals 22A-UI-16115-CS-T; 22A-UI-16117-CS-T; 22A-UI-16118-CS-T; and 22A-UI-16120-CS-T, and combined into one record. The claimant participated. The employer participated through Leon Griffin. Administrative notice was taken of the claimant's unemployment insurance benefits records. Exhibit D-1 was 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 December 27, 2020. Claimant's weekly benefit amount was \$481.00. Claimant is a laborer for the employer and earns \$16.00 an hour. Claimant is temporary laid off from time to time during the winter months due to weather conditions. For the week of April 4, 2021, through April 10, 2021 claimant reported 494.00 in wages. Claimant received a partial benefit amount of \$107.00. For the week of April 11, 2021, through April 17, 2021, claimant reported \$464.00 in wages. Claimant received a partial benefit amount of \$137.00. Claimant reported his net income for the two weeks and did not report his gross wages. Claimant's net income for each of those two weeks was \$640.00 per week.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is not partially unemployed and has been overpaid unemployment benefits:

Iowa Code section 96.3(3) provides:

3. Partial unemployment. An individual who is partially unemployed in any week as defined in section 96.1A, subsection 38, paragraph "b", and who meets the conditions of eligibility for benefits shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. The benefits shall be rounded to the lower multiple of one dollar.

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.

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.

In order to receive partial benefits the claimant needs to be partially unemployed and earned wages that are less than his unemployment weekly benefits amount plus \$15.00. Claimant's gross wages are higher than his weekly benefit amount plus \$15.00. As a result, claimant is not entitled to partial benefits. For the two-weeks between April 4, 2021, through April 17, 2021, the claimant was overpaid \$244.00 in state unemployment benefits. These benefits must be repaid.

DECISION:

The August 8, 2022 (reference 04) unemployment insurance decision is AFFIRMED. Claimant has been overpaid regular unemployment insurance benefits in the gross amount of \$244.00 for the two-week period between April 4, 2021, through April 17, 2021, which must be repaid.



Carly Smith
Administrative Law Judge

October 7, 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