

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

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**DANIEL J DELARIA**  
Claimant

**APPEAL NO. 22A-UI-16014-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FOOD HANDLING EQUIPMENT INC**  
Employer

**OC: 05/16/21  
Claimant: Appellant (2)**

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Iowa Code Section 96.3(7) - Overpayment  
Iowa Code Section 96.1A(37) – Temporary & Partial Unemployment

**STATEMENT OF THE CASE:**

On August 11, 2022, Daniel DeLaria (claimant) filed a timely appeal from the August 10, 2022 (reference 02) decision that held the claimant was overpaid \$1,061.00 in regular state benefits for two weeks between May 16, 2021 and May 29, 2021, based on the deputy's conclusion the claimant failed to report and/or improperly reported wages earned with Food Handling Equipment, Inc. After due notice was issued, a hearing was held on September 12, 2022. Claimant participated. The claimant represented the employer as President and sole corporate officer. The hearing in this matter was consolidated with the hearing in Appeal Number 22A-UI-16015-JT-T. Exhibit A, the online appeal, Exhibit B, the Current Earnings Report, and Exhibit C, short statement initialed RDeL, were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, WAGE-A, the Audit for Reported Wages, and the reference 02 and 03 Decision Overpayment Worksheets. Though the administrative law judge indicated at the hearing that he would also take official notice of the Report of Wages submitted by the employer, Iowa Workforce Development Integrity Bureau and Benefits Bureau have been unable to produce that document for the administrative law judge's review. Some of the information provided in the employer response to the Request of Wages form can be inferred from the Audit for Reported Wages.

**ISSUES:**

Whether the claimant was overpaid \$1,061.00 in regular state benefits for two weeks between May 16, 2021 and May 29, 2021, due to a failure to report and/or improper reported of wages earned with Food Handling Equipment, Inc.

Whether the claimant was partially and/or temporarily unemployed during the two weeks between May 16, 2021 and May 29, 2021.

**FINDINGS OF FACT:**

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

Daniel DeLaria (claimant) established an original claim for benefits that was effective May 16, 2021. Iowa Workforce Development set the weekly benefit amount for regular state benefits at \$531.00. The claimant made weekly claims that included weekly claims for the weeks ending May 22 and May 29, 2021. For the week ending May 22, 2021, the claimant reported zero regular wages, \$1.00 in vacation pay and \$1.00 in holiday pay. For the week ending May 29, 2021, the claimant reported zero wages, zero vacation pay and zero holiday pay. Based on the claimant's reported earnings, Iowa Workforce Development paid the claimant \$530.00 in regular benefits and \$300.00 in Federal Pandemic Unemployment Compensation (FPUC) for the week ending May 22, 2022. Based on the claimant's reported earnings, IWD paid the claimant \$531.00 in regular benefits and \$300.00 in FPUC for the week ending May 29, 2021.

The claimant owns and operates Food Handling Equipment, Inc., an S-corporation. The business sells and services restaurant equipment. The claimant is President. Earlier in the history of the corporation, the claimant owned and operated the corporation with two other people. Since January 1, 2022, the claimant has been the sole corporate officer. Prior to January 1, 2022, Robert DeLaria served as Treasurer and signed financial documents on behalf of the employer.

The claimant states he, as employer, laid himself off effective May 1, 2021, due to a lack of business. The claimant had up to that point worked in sales for the company and had drawn a roughly \$3,200.00 monthly salary. The claimant asserts he last received wages at the beginning of May 2021, when he received \$3,248.51 payment that represented his wages for the month of April 2021.

The company has at all relevant times used a third-party Certified Public Accountant, Carla Bates, C.P.A.

At some point prior to August 9, 2022, Iowa Workforce Development mailed a Request of Wages to Food Handling Equipment, Inc. concerning the claimant. The company had the accounting firm prepare the employer's response. The accounting firm documented that the employer had paid the claimant \$800.00 in wages for the week ending May 22, 2021 and for the week ending May 29, 2021. Robert DeLaria, Treasurer, signed the Request of Wages response on behalf of the employer to certify the accuracy of the employer information provided on the Request of Wages form. Robert DeLaria's involvement in the matter suggests the Request of Wages may have been mailed to the employer in 2021. The employer returned the completed document to Iowa Workforce Development. Based on the information provided by the employer, an IWD representative determined the claimant had earned wages during the weeks that ended May 22 and May 29, 2021 that exceeded the \$531.00 weekly benefit amount plus \$15.00 and, therefore, was not eligible for benefits for either week. The Workforce Development representative then entered overpayment decisions regarding the regular and FPUC benefits paid to the claimant for those two weeks. The claimant believes an associate of the C.P.A. prepared the employer's response to the Request of Wages form in error. The claimant advises the CPA's associate has since separated from the accounting firm on bad terms and that the former associate has not responded to attempts to contact him for information pertaining to information set forth on the Request of Wages form.

The claimant has provided as an exhibit a cursory note the claimant attributes to Robert DeLaria. The note states, "I signed the request for wage records mistakenly." The undated document does not include a signature but instead includes initials: "R. De L."

The claimant has provided as an exhibit for the appeal hearing a Current Earnings Report For the Period From May 1, 2021 to May 31, 2021. The report reflects a May 4, 2021 \$3,248.51

payment to the claimant. Affixed to the Report is a handwritten note from C.P.A. Bates. The handwritten note is dated August 11, 2022 and states: "Here is the info for payroll checks issued to Daniel Delaria for May 2021. The info previously reported was not correct. He was paid monthly for the previous month." The claimant believes the CPA's associate must have been confused when he reported the claimant earned \$800.00 in weekly wages for the weeks ending May 22 and May 29, 2021.

Though the claimant testified his last work day prior to the layoff was May 1, 2022, the claimant reported May 17, 2021 as his last day worked when he established the May 16, 2021 original claim.

### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 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.

Gross wages must be reported to Iowa Workforce Development as part of the weekly claim for the week in which the wages were earned. See Iowa Administrative Code rules 871-24.2(1)(g)(3)(2) and 871-24.2(2)(e)(2).

The reporting requirement is addressed in the 2019 Unemployment Insurance Claimant Handbook at page 8:

#### What to Report on the Weekly Claim?

You must report all gross earnings and gross wages on the weekly claim. Wages are reportable when earned, not when paid. Gross earnings or gross wages are your earnings before taxes or other payroll deductions are made. For additional information, please refer to the page on reportable income.

2019 Unemployment Insurance Claimant Handbook Updated 1-1-20.pdf.

Iowa Admin. Code rule 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.

Based on the evidence presented by the claimant, and given Iowa Workforce Development's loss of the Request of Wages document, the administrative law judge concludes the claimant did not earn wages for the weeks ending May 22 and May 29, 2022 and was not paid wages for those weeks. The evidence further indicates the claimant was laid off during those two weeks.

The claimant did not fail to report wages for those two weeks. The claimant erroneously reported \$1.00 in vacation pay and \$1.00 in holiday pay for the week that ended May 22, 2021, but the error had no impact on the claimant's eligibility for benefits. The \$1,061.00 in regular state benefits the claimant received for two weeks between May 16, 2021 and May 29, 2021 were not an overpayment of benefits.

**DECISION:**

The August 10, 2022 (reference 02) decision is REVERSED. The claimant was not overpaid \$1,061.00 in regular benefits for two weeks between May 16, 2021 and May 29, 2021, based on a failure to report wages or incorrect report of wages.



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James E. Timberland  
Administrative Law Judge

October 6, 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  
4<sup>th</sup> 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>.

**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 está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

**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.