

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

---

**DAVID C WILLEMSSEN**  
Claimant

**BERGOS ENTERPRISES LLC**  
**LORADOS**  
Employer

**APPEAL NO. 22A-UI-09068-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/22/20**  
**Claimant: Appellant (1R)**

---

Iowa Code Section 96.3(7) – Overpayment of Benefits

**STATEMENT OF THE CASE:**

On April 8, 2022, David Willemssen (claimant) filed a timely appeal from the March 30, 2022 (reference 01) decision that held the claimant was overpaid \$1,210.00 in benefits for 14 weeks between June 28, 2020 and October 3, 2020, based on the deputy's conclusion that the claimant incorrectly reported wages earned with Bergos Enterprises, L.L.C. After due notice was issued, a hearing was held on May 24, 2022. Claimant participated. Julie B ergo represented the employer. There were three appeal numbers set for a consolidated hearing: 22A-UI-09068-JT-T, 22A-UI-09069-JT-T, and 22A-UI-09072-JT-T. Exhibit A and Department Exhibits D-1 through D-8 were received into evidence.

**ISSUE:**

Whether the claimant was overpaid \$1,210.00 in benefits for 14 weeks between June 28, 2020 and October 3, 2020, due to the claimant incorrectly reported wages earned with Bergos Enterprises, L.L.C.

**FINDINGS OF FACT:**

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

David Willemssen (claimant) established an original claim for benefits that was effective March 22, 2020. Iowa Workforce Development set the weekly benefit amount at \$178.00. The claimant has at all relevant times been employed as a part-time bartender and server with Bergos Enterprises, L.L.C., doing business as Lorados. The employer reported base period quarterly wages as follows:

2018/4	2019/1	2019/2	2019/3
3196	4030	3761	4112

The base period quarterly wage amounts yield a \$290.00 average weekly wage, including the \$10.00 hourly wage and reported earned tips.

The claimant made weekly claims that included claims for each of the benefit weeks between June 28, 2020 and October 3, 2020. The employer advises that the employer only had reduced hours available for the claimant during that period. The claimant reported weekly wages and received weekly regular state benefits for that period as follows:

PAYMENT-RECORDS . .				***** UI *****		
BWE-DATE	RPT-CODE	AMT-RP	ISSUE-DT	P	PAY-CODE	AMOUNT
07/04/20	OVER15	130.00	07/06/20	2	PAID-DC	92.00
07/11/20	CLEAR	.00	07/13/20	2	PAID-DC	178.00
07/18/20	OVER15	120.00	07/20/20	2	PAID-DC	102.00
07/25/20	OVER15	100.00	07/27/20	2	PAID-DC	122.00
08/01/20	CLEAR	.00	08/03/20	2	PAID-DC	178.00
08/08/20	OVER15	110.00	08/10/20	2	PAID-DC	112.00
08/15/20	OVER15	100.00	08/17/20	2	PAID-DC	122.00
08/22/20	OVER15	90.00	08/24/20	2	PAID-DC	132.00
08/29/20	OVER15	110.00	08/31/20	2	PAID-DC	112.00
09/05/20	OVER15	140.00	09/08/20	2	PAID-DC	82.00
09/12/20	OVER15	7.00	09/14/20	2	PAID-DC	178.00
09/19/20	OVER15	110.00	09/21/20	2	PAID-DC	112.00
09/26/20	OVER15	80.00	09/29/20	2	PAID-DC	142.00
10/03/20	OVER15	140.00	10/05/20	2	PAID-DC	82.00

The claimant also received \$600.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits for each of the four weeks between June 28, 2020 and July 25, 2020 and \$300.00 in Lost Wages Assistance Payments (LWAP) for each of the six weeks between July 26, 2020 and September 5, 2020.

The 14-week period in question includes all of the third quarter of 2020 and one week of the fourth quarter of 2020. For that period, the employer reported quarterly wages paid to the claimant as follows: \$2,150.00 paid in the third quarter of 2020 and \$1,365.00 paid in the fourth quarter of 2020.

The claimant routinely under-reported his weekly wages when making weekly claims for the 14 weeks in question. The claimant routinely omitted earned tips when making his weekly claims.

On January 13, 2021, Iowa Workforce Development mailed a Request for Wage Records to the employer. The employer forwarded the correspondence to the employer's third-party accountant. The accountant used the employer's accounting records to fulfill the request for information and provided the requested information to IWD on February 26, 2021. The information provided by the accountant represented the most accurate and reliable available wage and tip information for the 14 weeks in question. See Exhibit D-2.

An IWD deputy used the information provided by the accountant to determine the claimant was overpaid regular benefits for each of the weeks between June 28, 2020 and October 3, 2020. See Exhibit D-3. The IWD deputy computed the total regular benefit overpayment amount for the period to be \$1,210.00. Because the information provided by the accountant indicated the claimant's wages for the weeks ending July 4, August 8, August 15, September 19, September 26, and October 3, 2020 exceeded the \$178.00 weekly benefit amount by more than \$15.00, the deputy concluded the claimant was not eligible for any benefits for those weeks. Based on that determination, the deputy concluded the claimant was also overpaid \$600.00 in FPUC benefits for the week that ended July 4, 2020 and was overpaid \$300.00 in LWAP benefits for the week ending August 8 and the week ending August 15, 2020, with a total \$600.00 LWAP overpayment amount.

## 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.

The wages to be reported as part of the weekly claim include tips. See Iowa Administrative Code rule 871-24.13(2)(g).

See Iowa Administrative 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

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 Ct. 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.*

The weight of the evidence establishes that the claimant routinely under-reported his wages during the 14-week period of June 28, 2020 through August 3, 2020, that the information provided by the accountant is the most accurate and reliable record of the claimant's wages for that period, and that the deputy accurately determined the applicable overpayment amounts. The claimant was overpaid \$1,210.00 in benefits for 14 weeks between June 28, 2020 and October 3, 2020, due to the claimant incorrectly reported wages earned with Bergos Enterprises, L.L.C. The claimant must repay the overpaid regular state benefits.

Given the consistent under-reporting of wages for the 14 audited weeks, this matter merits a remand to Iowa Workforce Development Investigations & Recovery Integrity Bureau for review of the claimant's wages and wage reporting for the entire period of March 22, 2020 through June 12, 2021.

**DECISION:**

The March 30, 2022 (reference 01) decision is AFFIRMED. The claimant was overpaid \$1,210.00 in regular state benefits for 14 weeks between June 28, 2020 and October 3, 2020, due to the claimant incorrectly reporting wages earned with Bergos Enterprises, L.L.C.

**REMAND:**

This matter is REMANDED to Iowa Workforce Development Investigations & Recovery Integrity Bureau for review of the claimant's wages and wage reporting for the entire period of March 22, 2020 through June 12, 2021.



---

James E. Timberland  
Administrative Law Judge

July 27, 2022  
Decision Dated and Mailed

jet/scn

**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](http://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.