

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

**CARLOS R WILSSON**  
Claimant

**APPEAL 22A-UI-08543-SN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CRAMER AND ASSOCIATES INC**  
Employer

**OC: 12/20/20**  
**Claimant: Appellant (1-R)**

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, Carlos R Wilsson, filed a timely appeal from the April 4, 2022, (reference 01) unemployment insurance decision that found he had been overpaid \$3,221.00 between March 28, 2021 and June 12, 2021 due to his failure to report wages earned during those weeks. After due notice was issued, a telephone conference hearing was set for May 17, 2022. The claimant participated. The employer, Cramer and Associates Inc, participated through Payroll Manager Lori Starkey. The administrative law judge took official notice of the agency records.

**ISSUES:**

Did the claimant misreport his earnings from March 28, 2021 through June 12, 2021?

Is the claimant 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 December 20, 2020. The claimant's weekly benefit amount on his 2021 claim was \$531.00.

	Actual Earnings	Reported Earnings	Issued	Benefits Paid
04/03/21	\$1,852.76	\$00.00	04/05/21	\$531.00
04/10/21	\$ 907.23	\$280.00	04/12/21	\$383.00
04/17/21	\$1,788.94	\$400.00	04/19/21	\$263.00
04/24/21	\$1,971.63	\$380.00	04/26/21	\$213.00
05/01/21	\$1,883.44	\$400.00	05/03/21	\$283.00
05/08/21	\$1,911.00	\$320.00	05/10/21	\$263.00
05/15/21	\$1,773.19	\$480.00	05/17/21	\$343.00

05/22/21	\$1,938.56	\$500.00	05/24/21	\$183.00
05/29/21	\$1,938.56	\$380.00	06/01/21	\$163.00
06/05/21	\$1,414.88	\$350.00	06/07/21	\$283.00
06/12/21	\$1,690.50	\$313.00	06/14/21	\$313.00

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge finds the claimant was not unemployed from March 28, 2021 through June 12, 2021. He further concludes the claimant has been overpaid benefits.

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 96.1A(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 far exceeded the threshold for being partially unemployed for each week that he filed weekly claims. The maximum amount of earnings the claimant could receive and still be eligible is \$546.00. The claimant was not even partially unemployed during any part of the period in question from March 28, 2021 through June 12, 2021.

The administrative law judge will not evaluate whether the claimant has been overpaid benefits.

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.

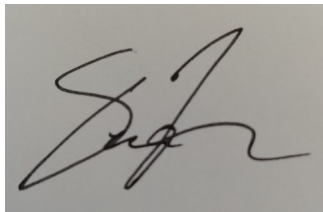
The claimant was not eligible for the entire period in question. As outlined in the findings of facts, the claimant received \$3,221.00 in regular unemployment benefits over that period. The claimant has been overpaid \$3,221.00 in regular unemployment benefits.

**DECISION:**

The April 4, 2022, (reference 01) unemployment insurance decision is affirmed. The claimant has been overpaid \$3,221.00 in regular unemployment insurance benefits, which must be repaid.

**REMAND:**

The administrative law judge is remanding to the Investigations and Recovery Unit the issue regarding whether the claimant materially misrepresented his earnings to receive unemployment insurance benefits.



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Sean M. Nelson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515) 725-9067

July 18, 2022  
Decision Dated and Mailed

smn/scn

*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  
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](http://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.