

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

SALLIE A RAMELOT
Claimant

THOMAS L CARDELLA & ASSOCIATES
Employer

APPEAL 22A-UI-16011-LJ-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 03/27/22
Claimant: Appellant (2R)

Iowa Code § 97.3(7) – Recovery of Benefit Overpayment
Iowa Code § 96.1A(37) – Total, Partial, and Temporary Unemployment

STATEMENT OF THE CASE:

On August 11, 2022, claimant Sallie A. Ramelot filed an appeal from the August 3, 2022 (reference 08) unemployment insurance decision that found she was overpaid regular unemployment insurance benefits based on a failure to report wages earned with employer Thomas L. Cardella & Associates. The parties were properly notified of the hearing. A telephonic hearing was held at 11:00 a.m. on Monday, September 12, 2022. Claimant Sallie A. Ramelot participated. The employer, Thomas L. Cardella & Associates, did not appear for the hearing or participate in the hearing. Iowa Workforce Development did not participate in the hearing through a witness or through documentation submitted in lieu of testifying. The administrative law judge took official notice of the administrative record, including claimant's appeal and the fact-finding documentation.

ISSUE:

Was the claimant totally, partially, or temporarily unemployed?
Was the claimant overpaid regular unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for Thomas L. Cardella & Associates on January 1, 2018. She was employed with the company, most recently as a full-time quality assurance representative, until March 25, 2022. The unemployment insurance decision dated April 20, 2022 (reference 02) found claimant was eligible for benefits based on a determination that claimant was separated due to a staff reduction or position elimination. Following her separation from the company, claimant opened a claim for unemployment insurance benefits with an effective date of March 27, 2022.

Claimant testified that she worked no hours with employer Thomas L. Cardella & Associates and earned no wages from that employer since her separation on March 25, 2022. The administrative record does not include any documentation prepared by anyone from the employer that states otherwise. No one from the employer or from IWD appeared for the hearing to dispute claimant's testimony.

Following her separation from Thomas L. Cardella & Associates, claimant began working as a caregiver for an individual client. She receives compensation through Amerigroup, though the funding comes both from that company and from the State of Iowa. The issues of whether claimant failed to properly report her wages with that company while receiving unemployment insurance benefits and whether claimant has been overpaid unemployment insurance benefits as a result have not been determined by IWD's Benefits Bureau.

Claimant filed for and received a total of \$2,880.00 in regular unemployment insurance benefits for the nine-week period between May 1, 2022 and July 9, 2022.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is totally unemployed from Thomas L. Cardella & Associates. Claimant is not overpaid benefits. The underlying decision is reversed.

Iowa Code § 96.1A(37) 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.

Under Iowa Employment Security Law, an individual must be totally or partially unemployed to be eligible for benefits. Iowa Code § 96.1A(37). Total unemployment is when someone has received no wages and performed no services during any given week. *Id.* In this case, the claimant has presented credible and unrefuted evidence that she performed no services and earned no wages with employer Thomas L. Cardella & Associates since opening her claim for unemployment insurance benefits. Claimant is totally unemployed.

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.

b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Here, claimant was totally unemployed from Thomas L. Cardella & Associates and receiving no wages from that employer at the time she was claiming unemployment insurance benefits. Therefore, she could not have been overpaid *due to a failure to report wages with that employer*. The overpayment must be reversed.

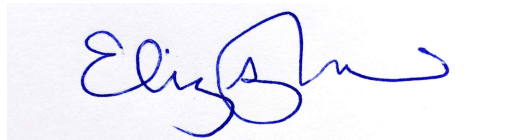
The issue of whether claimant has been overpaid based on a failure to report wages earned with Amerigroup is remanded to the Benefits Bureau for further investigation and determination.

DECISION:

The August 3, 2022 (reference 08) unemployment insurance decision is reversed. Claimant has not been overpaid unemployment insurance benefits based on a failure to report wages.

REMAND:

The issue of whether claimant has been overpaid based on a failure to report wages earned with Amerigroup is remanded to the Benefits Bureau for further investigation and determination.



Elizabeth A. Johnson
Administrative Law Judge

October 6, 2022
Decision Dated and Mailed

lj/kmj

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 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.