

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JENNIFER V ZAICHENKO
Claimant

APPEAL 18A-UI-00917-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 08/09/15
Claimant: Appellant (4)**

Iowa Code § 96.3(7) – Overpayment of Benefits
Iowa Code § 96.16(4) – Offenses and Misrepresentation
Iowa Admin. Code r. 871-25.1 – Misrepresentation & Fraud

STATEMENT OF THE CASE:

The claimant/appellant, Jennifer V. Zaichenko, filed an appeal from the January 22, 2018 (reference 05) Iowa Workforce Development (“IWD”) unemployment insurance decision which concluded the claimant was overpaid \$431.00 in unemployment insurance benefits because the she incorrectly reported, or failed to report, earnings for the week ending June 18, 2016, from the Iowa Department of Corrections. IWD imposed a 15% administrative penalty due to misrepresentation.

The parties were properly notified of the hearing. A telephone hearing was held on February 15, 2018. The claimant, Jennifer V. Zaichenko, participated personally. Kasandra Ellenwood, Investigator II, participated on behalf of IWD. IWD Exhibits A-D were admitted. The administrative law judge took official notice of the claimant’s unemployment insurance benefits records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did IWD correctly determine that the claimant was overpaid unemployment insurance benefits, and was the overpayment amount correctly calculated?
Did IWD properly impose a penalty based upon the claimant’s misrepresentation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed a claim for unemployment insurance benefits with an effective date of August 9, 2015.

IWD, through Ms. Ellenwood, conducted an audit and discovered that claimant received wages from the Iowa Department of Corrections during the time period of December 13, 2015 through July 30, 2016 but failed to report the wages. (See reference 04 decision/ Appeal: 18A-UI-00916-JC-T). Based upon information Ms. Ellenwood obtained during her January 16, 2018

interview with the claimant for that audit (Department Exhibit C6), she believed a second investigation regarding three weeks was warranted. The three weeks in question were December 12, 2015, December 25, 2015, and June 18, 2016 (Department Exhibit D, D1).

The basis for Ms. Ellenwood's additional investigation was concerns of whether the claimant was able to and available for work for each of the three weeks. After comparing the claimant's statement, her weekly continued claims, and the employer's reporting of wages, Ms. Ellenwood concluded the weeks of December 12, 2015 and December 25, 2015 did not warrant an additional decision being rendered for the claimant's failure to be able and available for work. As such, those two weeks became moot for purposes of the additional investigation.

No decision was rendered with respect to whether the claimant was able to and available for work for the week ending June 18, 2016. Rather, on January 22, 2018, an unrelated initial decision was rendered (reference 05) mirroring the language from the reference 04 decision which concluded the claimant had been overpaid benefits for a one week period ending June 18, 2016, for her failure to report her wages for the week from the Department of Corrections. Another 15% penalty was also tacked on to the overpayment, which also mirrors the reference 04 decision.

The issue of whether the claimant was overpaid benefits for the week ending June 18, 2016, for a failure to report wages earned by Department of Corrections has already been specifically addressed and adjudicated. (See reference 04 decision/ Appeal: 18A-UI-00916-JC-T).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes IWD has previously adjudicated the exact issue at hand, and concluded the claimant was overpaid benefits for the week ending June 18, 2016, and that a 15% penalty was calculated.

Generally, courts and administrative tribunals do not decide issues when the underlying controversy is moot. *Rhiner v. State*, 703 N.W.2d 174, 176 (Iowa 2005). "A case is moot if it no longer presents a justiciable controversy because the issues involved are academic or nonexistent." *Iowa Bankers Ass'n v. Iowa Credit Union Dep't*, 335 N.W.2d 439, 442 (Iowa 1983)

In this case, an initial decision (reference 04) was rendered under the same benefit year, which concluded the claimant had been overpaid benefits from June 13, 2015 through July 30, 2016 for her failure to report wages from the Department of Corrections, and that a 15% penalty due to misrepresentation was warranted. The claimant timely appealed the matter and a hearing was conducted. The administrative law judge affirmed the reference 04 decision in Appeal 18A-UI-00916-JC-T.

The agency also issued a second decision for the one week period ending June 18, 2016, concluding the claimant was overpaid benefits and issued a 15% penalty, for the exact same reason (failure to report her Department of Corrections wages). The reference 04 decision included the week of June 18, 2016, and therefore the administrative law judge concludes it would be improper to issue a second or duplicate overpayment decision and penalty, encompassing the same week, based upon the same reasoning, and conduct.

DECISION:

The January 22, 2018, (reference 05) unemployment insurance decision is modified in favor of the claimant/appellant. The issue of whether the claimant was overpaid benefits for the week ending June 18, 2016, for a failure to report wages earned by Department of Corrections has already been specifically addressed and adjudicated, (See reference 04 decision/ Appeal: 18A-UI-00916-JC-T), and concluded the claimant was overpaid benefits and the penalty was warranted. A second overpayment and penalty for the period and for the same reason shall not be imposed.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn