

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARY WALKER

Claimant

APPEAL 20R-UI-06135-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
INVESTIGATIONS & RECOVERY**

OC: 03/22/20

Claimant: Appellant (1)

Iowa Code §96.16(4) – Misrepresentation
Iowa Code §96.5(8) – Administrative Penalty

STATEMENT OF THE CASE:

The claimant/appellant, Mary Walker, filed an appeal from the March 30, 2020 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision which concluded the claimant was overpaid unemployment insurance benefits because of failure to accurately report earnings while concurrently filing weekly claims for unemployment insurance benefits. IWD also imposed a 15% administrative penalty due to misrepresentation.

This administrative law judge issued a decision on May 13, 2020, affirming the representative’s decision. A decision of remand was issued by the Employment Appeal Board on June 15, 2020. After hearing notices were mailed to the parties’ last-known addresses of record, a telephone hearing was scheduled for July 20, 2020. The claimant participated personally. IWD did not provide a telephone number where it could be reached. 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:

Whether IWD correctly established a claim for an overpayment of unemployment insurance benefits?

Did IWD properly impose an administrative 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 March 20, 2020. An initial decision notifying the claimant of the overpayment and 15% penalty was mailed to her on June 4, 2015. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by June 14, 2015. The claimant did not appeal that decision. She did not dispute the overpayment amount and the debt remains after five years.

The claimant then filed a claim for benefits with an effective date of March 22, 2020, in response to her separation from employment. The claimant opined that she should be allowed to file and collect unemployment insurance benefits, which then could be offset by IWD and allow IWD to recoup some of her overpayment. She provided no additional evidence regarding the underlying misrepresentation that led to the overpayment of benefits and subsequent penalties.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was overpaid benefits, and was properly disqualified from benefits due to misrepresentation.

Issuance of overpayment:

When IWD determines an individual who received unemployment benefits was ineligible to receive benefits, IWD must recoup the benefits received, whether or not the individual acted in good faith and was not otherwise at fault. Iowa Code § 96.3(7). IWD may, in its discretion, recover the overpayment either by deducting a sum equal to the overpayment from any future benefits payable to the individual, or by collecting a sum equal to the overpayment directly from the individual.

In this case, a decision was issued on June 4, 2020, reference 01. There is no evidence to refute the claimant's overpayment and subsequent 15% penalty. Therefore, the administrative law judge concludes the agency properly calculated the claimant's overpayment and assessment of a 15% penalty.

Administrative Penalty and Eligibility for Benefits:

IWD may impose an administrative penalty if an insured person has, within the preceding 36 calendar months, willfully and knowingly made a false statement or misrepresentation, or willfully and knowingly failed to disclose a material fact, with the intent to defraud by obtaining benefits the person is not entitled to. Iowa Code §96.5(8). The person is disqualified for the week in which IWD makes the determination and forfeits all benefit rights to unemployment insurance benefits for a period of not more than the remaining benefit period as determined by IWD. *Id.* IWD's investigator has broad discretion to determine the specific penalty for deliberate falsification for the purpose of obtaining or increasing unemployment insurance benefits. 871 IAC 25.9(2). "The degree and severity of penalty shall be determined at the discretion of the investigator and shall be based upon the nature of the offense and the facts." 871 IAC 25.9(2)c. The administrative penalty recommended for falsification ranges from three weeks through the end of the benefit year. *Id.* This administrative penalty may be imposed in addition to a prior 15% penalty in conjunction with an overpayment.

"Fraud" means the intentional misuse of facts or truth to obtain or increase unemployment insurance benefits for oneself or another or to avoid the verification and payment of employment security taxes; a false representation of a matter of fact, whether by statement or by conduct, by false or misleading statements or allegations; or by the concealment or failure to disclose that which should have been disclosed, which deceives and is intended to deceive another so that they, or the department, shall not act upon it to their, or its, legal injury. The statute defines the term knowingly as "having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the requirement or prohibition involved." 871 IAC 25.1.

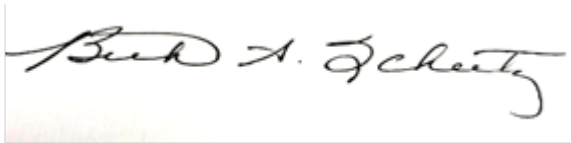
It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of*

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 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.*

Therefore, based on the credible evidence presented, the administrative law judge concludes the previous decision will remain in full force and effect. The overpayment has not been paid. The claimant is not eligible to receive unemployment insurance benefits until such time as the overpayment plus penalty has been paid.

DECISION:

The March 30, 2020, (reference 01) unemployment insurance decision is affirmed. IWD correctly imposed the administrative penalty due to the claimant's misrepresentation. The claimant is ineligible to receive unemployment insurance benefits.



Beth A. Scheetz
Administrative Law Judge

July 27, 2020
Decision Dated and Mailed

bas/scn