

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

WAHYU BOENTORO
Claimant

APPEAL NO. 19A-UI-09955-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
INVESTIGATIONS & RECOVERY**

**OC: 5/12/19
Claimant: Appellant (5/R)**

Iowa Code Sections 96.5(8) & 96.16(4) – Fraud-based Overpayment & Administrative Penalty
Iowa Code Section 96.3(7) - Overpayment

STATEMENT OF THE CASE:

Wahyu Boentoro filed a timely appeal from the December 5, 2019, reference 02, decision that held he was overpaid benefits for the period of February 18, 2019 through October 12, 2019 based on his incorrect reporting wages. The decision determined the net overpayment amount to be \$1,796.00. The decision stated that a 15 percent penalty would be added to the overpayment amount, based on the investigator's conclusion that Mr. Boentoro had misrepresented his wages. After due notice was issued, a hearing was held on January 14, 2020. Mr. Boentoro participated. Elizabeth Volious, Investigator 2, represented the Iowa Workforce Development Investigations & Recovery Section. Exhibits A through D, and Exhibits 1 through 15 were received into evidence.

ISSUE:

Whether the claimant was overpaid benefits.

Whether the claimant intentionally misrepresented his wages and therefore is subject to a 15 percent administrative penalty in connection with the overpayment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant Wahyu Boentoro established an original claim for benefits that was effective February 11, 2018. Iowa Workforce Development set Mr. Boentoro's weekly benefit amount at \$516.00. Mr. Boentoro received \$13,416.00 in benefits for the period of February 11, 2018 through January 12, 2019. Mr. Boentoro subsequently established another original claim that was effective May 12, 2019. Iowa Workforce Development set Mr. Boentoro's weekly benefit amount at \$502.00. Mr. Boentoro received \$9,090.00 in benefits for the period of May 12, 2019 through October 19, 2019.

On October 31, 2019, Mr. Boentoro emailed detailed wage and work hours information to Iowa Workforce Development for the period of October 14, 2019 through October 27, 2019 in response to a letter that Iowa Workforce Development had mailed to Mr. Boentoro on October 24, 2019. In the October 31, 2019 correspondence, Mr. Boentoro indicated that his

gross wages for the week ending October 19, 2019 totaled \$486.50. On October 20, 2019, Mr. Boentoro had made his weekly claim for the week that ended October 19, 2019 and had at that time reported \$461.00 in gross wages for the week. The discrepancy in reported amounts alerted the Iowa Workforce Development Investigations & Recovery Section to a potential overpayment and to a potential fraud.

In November 2019, the Iowa Workforce Development Investigations & Recovery Section commenced an investigation into whether Mr. Boentoro had accurately reported his wages for the period of February 11, 2018 through January 12, 2019 and May 12, 2019 through October 19, 2019, whether Mr. Boentoro had been overpaid benefits for the same periods, and whether Mr. Boentoro had intentionally misrepresented his wages. Elizabeth Volious, Investigator 2, was assigned to conduct the investigation. Ms. Volious solicited wage documentation from the three relevant employers and compared that information to the weekly wages Mr. Boentoro had reported when making his weekly claims during the period of February 11, 2018 through January 12, 2019 and May 12, 2019 through October 19, 2019. That comparison and analysis revealed that Mr. Boentoro had underreported his weekly wages during 50 of the 55 weeks in question. While some of Mr. Boentoro's weekly claim reported wages did not deviate significantly from Mr. Boentoro's actual wages for the week, in 10 or more instances, Mr. Boentoro had substantially underreported his weekly wages as follows:

<u>Benefit week end date</u>	<u>Claimed wages</u>	<u>Actual wages</u>	<u>Disparity</u>
5/5/18	\$180.00	\$341.00	\$161.00
6/2/18	\$220.00	\$424.00	\$204.00
7/7/18	\$187.00	\$230.00	\$43.00
8/25/18	\$173.00	\$236.00	\$63.00
9/29/18	\$61.00	\$248.00	\$167.00
1/12/19	\$126.00	\$223.00	\$97.00
6/29/19	\$222.00	\$1,741.00	\$1,518.00
7/6/19	\$219.00	\$269.00	\$50.00
7/27/19	\$183.00	\$256.00	\$73.00
8/24/19	\$230.00	\$271.00	\$41.00
8/31/19	\$251.00	\$301.00	\$50.00
9/21/19	\$214.00	\$295.00	\$81.00

The employer's reported by the employer for the week that ended June 29, 2019 included a \$1,500.00 tuition reimbursement that the employer provided to Mr. Boentoro for a business analytics class. Through her investigation, Ms. Volious determined that Mr. Boentoro's under-reporting of wages had resulted in Mr. Boentoro being overpaid benefits in each of 46 weeks. The overpaid benefits totaled \$1,825.00.

Ms. Volious also identified six weeks in which Mr. Boentoro had over-reported his weekly wages when making his weekly claim, as follows:

<u>Benefit week end date</u>	<u>Claimed wages</u>	<u>Actual wages</u>	<u>Disparity</u>
4/28/18	\$145.00	\$0.00	\$145.00
5/19/18	\$197.00	\$188.00	\$9.00
6/16/18	\$206.00	\$202.00	\$4.00
10/20/18	\$211.00	\$207.00	\$4.00
5/25/19	\$232.00	\$224.00	\$8.00
10/19/19	\$461.00	\$356.00	\$105.00

The under-reporting of benefits gave rise to an under-payment of benefits. Ms. Volious calculated the total underpayment of \$29.00. However, the Audit for Reported Wages suggests a higher underpayment amount. The underpayment accounts include \$16.00 for the week that ended April 28, 2018, \$9.00 for the week that ended May 19, 2018, \$4.00 for the week that ended June 16, 2018, \$4.00 for the week that ended October 20, 2018, and \$8.00 for the week that ended May 25, 2019. Those amounts add up to \$41.00. In addition, Ms. Volious' under-payment calculation does not factor in the under-reported wages for the week that ended October 19, 2019.

Ms. Volious investigation included a December 3, 2019 telephone interview with Mr. Boentoro and a written response from Mr. Boentoro to investigation documentation that Ms. Volious provided to Mr. Boentoro. Mr. Boentoro asserted that he had reported a weekly wage average, rather than actual wages when making his weekly claims. Mr. Boentoro asserted that the \$1,500.00 tuition reimbursement was not subject to federal income tax and therefore could not be deemed wages for unemployment insurance purposes.

When Mr. Boentoro established his original claims in February 2018 and May 2019, he completed an online application process. In connection with each application for benefits, Mr. Boentoro acknowledged his obligation to read, know and follow the information contained in the Unemployment Insurance Handbook. In connection with the 2018 claim, Mr. Boentoro obtained a hard copy of the 2017-2018 Unemployment Insurance Handbook. Mr. Boentoro reviewed the handbook. The Unemployment Insurance Handbook included instructions for making weekly claims at pages 19 through 21. Those instructions included a directive to report "any pay" and the "Total amount of gross wages (before deductions) earned during the week," as well as the "Total amount of gross holiday pay, gross vacation and severance, if applicable." The handbook included simple instructions for calculating gross weekly earnings. The handbook did not include an instruction to report *averaged* weekly wages. In connection with the 2019 claim, Mr. Boentoro indicated in application benefits that he would review the Unemployment Insurance Handbook online.

Each time Mr. Boentoro made a weekly claim for benefits, Mr. Boentoro had to certify the accuracy of the information he was providing in order to complete the weekly claim.

Ms. Volious concluded through her investigation that Mr. Boentoro had misrepresented his wages during 46 of the 55 weeks in question by under-reporting his wages for those weeks. Ms. Volious concluded that Mr. Boentoro was subject to a 15 percent administrative penalty (15 percent of \$1,825.00) in light of his misrepresentation of his wages.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code 96.3(7)(a) provides:

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.

Iowa Code section 96.5(8) provides:

Administrative penalty. If the department finds that, with respect to any week of an insured worker's unemployment for which such person claims credit or benefits, such person has, within the thirty-six calendar months immediately preceding such week, with intent to defraud by obtaining any benefits not due under this chapter, **willfully and knowingly made a false statement or misrepresentation**, or willfully and knowingly failed to disclose a material fact; such person shall be disqualified for the week in which the department makes such determination, and forfeit all benefit rights under the unemployment compensation law for a period of not more than the remaining benefit period as determined by the department according to the circumstances of each case. Any penalties imposed by this subsection shall be in addition to those otherwise prescribed in this chapter.

Iowa Code section 96.16(4)(a) and (b) provides:

Misrepresentation.

a. An individual who, by reason of the nondisclosure or misrepresentation by the individual or by another of a material fact, has received any sum as benefits under this chapter while any conditions for the receipt of benefits imposed by this chapter were not fulfilled in the individual's case, or while the individual was disqualified from receiving benefits, **shall be liable to repay to the department for the unemployment compensation fund, a sum equal to the amount so received by the individual**. If the department seeks to recover the amount of the benefits by having the individual pay to the department a sum equal to that amount, the department may file a lien with the county recorder in favor of the state on the individual's property and rights to property, whether real or personal. The amount of the lien shall be collected in a manner similar to the provisions for the collection of past-due contributions in section 96.14, subsection 3.

b. **The department shall assess a penalty equal to fifteen percent of the amount of a fraudulent overpayment.** The penalty shall be collected in the same manner as the overpayment. The penalty shall be added to the amount of any lien filed pursuant to paragraph "a" and shall not be deducted from any future benefits payable to the individual under this chapter. Funds received for overpayment penalties shall be deposited in the unemployment trust fund.

Iowa Administrative Code rule 871-24.13(2)(e) provides:

Deductible payments from benefits. The following payments are considered as wages and are deductible from benefits on the basis of the formula used to compute an individual's weekly benefit payment as provided in rule 871-24.18(96):

e. Remuneration other than cash. The cash value of all remuneration payable in any medium other than cash, board, rent, housing, lodging, meals, or similar advantage, is only deductible when based on service performed by the individual during the period in which the individual is also claiming benefits.

The weight of the evidence in the record establishes that Mr. Boentoro was indeed overpaid \$1,825.00 in unemployment insurance benefits for the period February 18, 2019 through

October 12, 2019. Pursuant to Iowa Administrative Code rule 871-24.13(2)(e), the \$1,500.00 tuition reimbursement Mr. Boentoro received from his employer was a form of remuneration. Ms. Volious appropriately treated the amount as wages deductible from benefits for the week that ended June 29, 2019. Under Iowa Code section 96.3(7), Mr. Boentoro is required to repay the \$1,825.00 overpaid benefits, and Iowa Workforce Development is required to recover the \$1,825.00 in overpaid benefits, regardless of whether Mr. Boentoro was at fault in receiving the benefits.

Ms. Volious correctly concluded that Mr. Boentoro was subject to the 15 percent administrative penalty in connection with the \$1,825.00 overpayment of benefits. The weight of the evidence supports Ms. Volious' conclusion that Mr. Boentoro's under-reporting of weekly wages involved willful and knowing misrepresentation. Mr. Boentoro had received wage reporting instructions in connection with each original claim. Mr. Boentoro testified that he reviewed the handbook at the time of the 2018 original claim. Mr. Boentoro is clearly an intelligent individual and capable of fully understanding and following simple wage reporting instructions. The substantial disparities in the weekly wage reporting in connection with 10 or more claim weeks cannot be attributed to estimating wages, averaging wages, a non-standard work week start date and end date, or other misunderstanding.

This matter will be remanded to the Investigations and Recovery Section for review of the under-payment calculation, based on the information contained in the Audit for Reported Wages and the database readout (DBRO) information regarding the benefit week that ended October 19, 2019.

DECISION:

The December 5, 2019, reference 02, decision is modified as follows. The claimant was overpaid \$1,825.00 in unemployment insurance benefits for the period February 18, 2019 through October 12, 2019. The claimant is required to repay the overpaid benefits. The overpayment was based on knowingly and intentional misrepresentation of wages. The claimant is subject to a 15 percent administrative penalty applicable to the \$1,825.00 overpayment amount.

This matter is remanded to the Investigations and Recovery Section for review of the under-payment calculation, based on the information contained in the Audit for Reported Wages and the database readout (DBRO) information regarding the benefit week that ended October 19, 2019.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/scn