

IOWA DEPARTMENT OF INSPECTIONS & APPEALS  
Division of Administrative Hearings  
Wallace State Office Building – Third Floor  
502 East Ninth Street  
Des Moines, Iowa 50319-8082

**Appeal Number: 17IWDUI069  
17IWDUI070  
17IWDUI088**

**OC: 10/04/15  
08/16/16**

**Claimant: Appellant (04, 05)/(02)**

**DECISION OF THE ADMINISTRATIVE LAW JUDGE**

**CHAD HENNIGAR  
5160 SYCAMORE DRIVE  
PLEASANT HILL, IA 50327**

MICHELLE SADDORIS, IWD INVESTIGATOR  
JONI BENSON, IWD  
JODI DOUGLAS, IWD  
NICHOLAS OLIVENCIA, IWD  
EMILY CHAFA, UI APPEALS MANAGER

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor Lucas Building, Des Moines, Iowa 50319.**

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.

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.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to the Department. 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. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

---

Charles B. Tarvin, Administrative Law Judge

October 24, 2016

---

(Dated and Mailed)

---

Iowa Code section 96.5(2)(a) – Determination of discharge for gross misconduct  
Disqualification from receipt of UIB  
Iowa Code section 96.3-7 – Correctness of amounts claimed as overpayment of benefits  
Iowa Code section 96.16-4 – Misrepresentation  
Iowa Code section 96.5-8 – Administrative penalty

**STATEMENT OF THE CASE**

On June 6, 2016, IWD issued a decision (reference 04) that Hennigar was ineligible to receive UIB effective October 4, 2015 because Hennigar had been disqualified for misconduct. On June 13, 2016, Hennigar filed the appeal.

On June 9, 2016, IWD issued a decision (reference 05) that Hennigar received an overpayment of UIB from October 4, 2015 to March 5, 2016 because Hennigar had been disqualified for misconduct. It assessed an additional administrative penalty for misrepresentation. On June 13, 2016, Hennigar filed the appeal.

On August 16, 2016, IWD issued a decision (reference 02) that Hennigar received an overpayment of UIB for the two weeks ending on August 6, 2016 because Hennigar had been disqualified for misconduct. On August 19, 2016, Hennigar filed the appeal.

On August 24, 2016, IWD transmitted the case(s) to the Iowa Department of Inspections and Appeals (DIA) to schedule a contested case hearing. When IWD transmitted the case(s), it mailed copies of the administrative file(s) to Hennigar.

On September 27, 2016, Administrative Law Judge Charles B. Tarvin convened the rescheduled hearing by teleconference call. Hennigar participated in the hearing. Michelle Saddoris, an IWD investigator, participated in the hearing. The judge admitted the IWD decisions, appeals, IWD exhibits A1 – E5, and digital recording into the record.

### **ISSUES**

1. Whether IWD correctly determined that claimant was discharged for misconduct.
2. Whether IWD correctly disqualified the claimant from receipt of UIB.
3. Whether IWD correctly established claim(s) for overpayment(s) of UIB.
2. Whether IWD correctly determined that one of the overpayments was the result of misrepresentation and assessed an administrative penalty.

### **FINDINGS OF FACT**

In March 2011, employer HM hired Hennigar as its controller. In May 2011, employer HM discharged Hennigar. Employer HM alleged that Hennigar was discharged for misconduct, insofar as Hennigar, without authorization, purchased a watch (\$7,000) with employer funds. IWD disallowed Hennigar's claim for UIB based on gross misconduct.

In November 2012, employer SS hired Hennigar as its controller. In October 2014, employer SS discharged Hennigar. Employer SS alleged that Hennigar was discharged for misconduct, insofar as Hennigar gave himself unauthorized raise(s) and received wages to which Hennigar was not entitled. IWD disallowed Hennigar's claim for UIB based on gross misconduct. (exhibit D)

In June 2015, employer IH hired Hennigar as its chief financial officer (CFO). In September 2015, employer IH discharged Hennigar upon discovering that Hennigar was not registered as a certified public accountant (CPA) in Iowa. After discharging Hennigar, employer IH discovered that Hennigar may have committed theft against it.

On October 4, 2015, Hennigar filed a claim for UIB and falsely reported that he had been

laid off. (exhibits B, C)

The department approved Hennigar's claim. From October 4, 2015 to March 5, 2016, Hennigar received UIB totaling \$10,736.00. (exhibit C)

On February 9, 2016, IWD received a report that Hennigar may have committed a theft from a previous employer.

On February 19, 2016, Saddoris, an IWD investigator, interviewed Hennigar. Hennigar waived his Snyder rights. Hennigar stated that employer IH terminated Hennigar from his job because Hennigar was not certified as a CPA in Iowa. After he was discharged, employer IH alleged that Hennigar committed theft (\$9,600?) against it. Hennigar asserted that his use of company funds to purchase items for himself was unintentional. (exhibits A, B, testimony of Saddoris)

On May 24, 2016, an Iowa district court convicted Hennigar of theft (2<sup>nd</sup> degree), a Class D felony, and entered a deferred judgment against him. The court ordered Hennigar to make restitution (\$9,800) to employer IH. (exhibits B, C)

On June 6, 2016, Saddoris conducted a fact-finding interview with employer IH and Hennigar to determine whether Hennigar committed gross misconduct. Saddoris concluded that Hennigar committed gross misconduct while employed by employer IH. (exhibit C, testimony of Saddoris)

On June 6, 2016, IWD issued a decision (reference 04) that Hennigar was ineligible to receive UIB effective October 4, 2015 because Hennigar had been disqualified for misconduct. (exhibit C)

On June 9, 2016, IWD issued a decision (reference 05) that Hennigar received an overpayment (\$10,736.00) of UIB from October 4, 2015 to March 5, 2016 because Hennigar had been disqualified for misconduct. It assessed an additional administrative penalty (\$1,610.40) for misrepresentation. (exhibits A, C)

On August 16, 2016, IWD issued a decision (reference 02) that Hennigar received an overpayment (\$1,012.00) of UIB for the two weeks ending on August 6, 2016 because Hennigar had been disqualified for misconduct. (IWD decision)

### **CONCLUSIONS OF LAW**

Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and the worker's family. See Iowa Code section 96.2.

Gross misconduct.

Gross misconduct is deemed to have occurred after a claimant loses employment as a result of an act constituting an indictable offense in connection with the claimant's employment, provided the claimant is duly convicted thereof or has signed a statement admitting the commission of such an act. Determinations regarding a benefit claim may be redetermined within five years from the effective date of the claim. Any benefits paid to a claimant prior to a determination that the claimant has lost employment as a result of such act shall not be considered to have been accepted by the claimant in good faith. See Iowa Code section 96.5(2)(c).

"Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. See 871 Iowa Administrative Code (IAC) section 24.32(1)"a".

For the purposes of these rules gross misconduct shall be defined as misconduct involving an indictable offense in connection with the claimant's employment, provided that such claimant is duly convicted thereof or has signed a statement admitting that such claimant has committed such act. See 871 IAC section 24.32(3)"a".

An indictable offense means a common law or statutory offense presented on indictment or on county attorney's information, and includes all felonies and all indictable misdemeanors punishable by a fine of more than \$500 or by imprisonment in the county jail for more than 30 days. See 871 IAC section 24.32(3)"b".

In the case at issue, Hennigar stated that before a temporary employment agency placed him with employer IH, the agency asked him whether he was certified as a CPA and he responded yes. At the time, Hennigar reportedly was certified as a CPA in Minnesota but not in Iowa. Hennigar asserted that when employer IH hired him, it did not specify that as a precondition of employment, Hennigar had to be certified as a CPA in Iowa. Since employer IH discharged Hennigar when it discovered that Hennigar was not certified as a CPA in Iowa, Hennigar suggested that employer IH wrongfully discharged him.

On May 24, 2016, Hennigar pled guilty to theft (2<sup>nd</sup> degree) in connection with his employment by employer IH. Pursuant to Iowa Code section 96.5(2)(c), the action (reference 04) of IWD redetermining that in October 2015, employer IH discharged Hennigar for gross misconduct is AFFIRMED. Iowa Code section 96.5(2)(c).

### Disqualification

Any individual who has been discharged or suspended for misconduct connected with work is disqualified for benefits until the individual has worked in (except in back pay awards) and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible. See 871 IAC section 24.32(1)"b".

Since IWD correctly redetermined that in October 2015, employer IH discharged Hennigar for gross misconduct, the action (reference 04) of IWD disqualifying Hennigar from receipt of UIB for 22 weeks between October 4, 2015 and March 5, 2016 is AFFIRMED. Iowa Code section 96.5(2)(c) and 871 IAC section 24.32(1)"b".

### Overpayment #1

"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.

"Misrepresentation" means to give misleading or deceiving information to or omit material information; to present or represent in a manner at odds with the truth.

"Overpayment" means the amount of unemployment insurance benefits erroneously paid to a claimant due to error, misrepresentation, or fraud.

See 871 IAC section 25.1.

Since Hennigar, for 22 weeks between October 4, 2015 and March 5, 2016, received UIB for which he was ineligible, the action (reference 05) of IWD establishing and requesting repayment of the first overpayment (\$10,736.00) received by Hennigar is AFFIRMED. 871 IAC section 25.8.

### Misrepresentation

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, in the discretion of the department, either be liable to have the sum deducted from any future benefits payable to the individual under this chapter or shall be liable to repay to the department for the unemployment compensation fund, a sum equal to the amount so received by the individual. See Iowa Code section 96.16(4)"a".

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. See Iowa Code section 96.16(4)"b".

Whenever it is found that a claimant has received benefits through misrepresentation and has been assessed with an overpayment, no further benefits shall be paid to such claimant until the total amount of the overpayment has been reimbursed or otherwise liquidated to the satisfaction of the department. 871 IAC section 25.8(2)"a".

In the case at issue, since Hennigar, when he filed his claim, falsely stated that he was "laid off" and since IWD correctly redetermined that employer IH discharged Hennigar for gross misconduct, the decisions (reference 05) of IWD determining that Hennigar received the first overpayment through misrepresentation and assessing a 15% penalty (i.e., \$1,610.40) are AFFIRMED. Iowa Code section 96.16(4)"b".

### Overpayment #2

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. See Iowa Code section 96.3(7)"a".

In the case at issue, on July 24, 2016, Hennigar reportedly filed a second UIB claim following his separation from employment with employer SR. Sadoris testified that IWD awarded Hennigar UIB, totaling \$1,012.00, on the second claim for the two weeks ending August 6, 2016. IWD applied the \$1,012.00 as a credit against the outstanding balance (i.e., \$10,736.00) owing on the first overpayment.

Sadoris asserted that IWD erred when it awarded UIB to Hennigar on Hennigar's second claim, in part because IWD failed timely to wipe clean Hennigar's previous wage history as a result of Hennigar's earlier gross misconduct. As a result, on August 16, 2016, IWD issued a decision (reference 02) that Hennigar received a second overpayment (\$1,012.00) of UIB for the two weeks ending on August 6, 2016 because Hennigar previously had been disqualified for misconduct.

Hennigar testified that IWD never deposited the UIB (\$1,012.00) that reportedly were awarded him on his second claim into his account.

Sadoris noted that she left her job as an IWD investigator prior to Hennigar filing the third appeal. Sadoris, on behalf of IWD, submitted no documentary evidence in support of the establishment of the alleged second overpayment. No documentary evidence in support of the alleged second overpayment timely was submitted by other IWD personnel.

IWD failed to establish, based on a preponderance of evidence, that Hennigar received a second overpayment (\$1,012.00) of UIB based on agency error. The action of IWD establishing the second overpayment against Hennigar is REVERSED. Iowa Code section 96.3(7)"a".

## **DECISION**

1. IWD's decision on OCD 10/04/15, dated June 6, 2016, reference 04, is AFFIRMED (i.e., found to be correct).
2. IWD's decision on OCD 10/04/15, dated June 9, 2016, reference 05, is AFFIRMED.
3. IWD's decision on OCD 07/24/16, reference 02, dated August 16, 2016 is REVERSED (i.e., found to be incorrect)

CBT