

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

JEREMIAH J MOWERY

Claimant

APPEAL 22A-UI-10710-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT INVESTIGATION &
RECOVERY**

OC: 09/15/19

Claimant: Appellant (4)

Iowa Code § 96.3(7) – Overpayment of Benefits
Iowa Code § 96.16(4) – Offenses and Misrepresentation
Iowa Code § 96.1A(37) – Total, Partial, Temporary Unemployment
Iowa Code § 96.5(5) – Other Compensation
Iowa Code § 96.5(8) – Disqualification – Administrative penalty
Iowa Admin. Code r. 871-25.1 – Definitions – Misrepresentation & Fraud
Iowa Admin. Code r. 871-25.9 – Administrative Penalties

STATEMENT OF THE CASE:

Jeremiah J. Mowery, the claimant/appellant, filed an appeal from the Iowa Workforce Development's (IWD) April 19, 2022 (reference 02) unemployment insurance (UI) decision that concluded he was overpaid REGULAR (state) UI benefits in the gross amount of \$1,395.00 because he did not report and/or incorrectly reported wages earned with employer Jensen Crane Services Inc for 10 weeks while receiving REGULAR UI benefits. IWD imposed a 15 percent administrative penalty due to misrepresentation. The parties were properly notified of the hearing. A telephone hearing was held on July 11, 2022. Mr. Mowery participated personally. Angelita Sills-Campos, IWD investigator, participated on behalf of the department. Hannah Best, human resources coordinator, participated on behalf of the employer. Department's Exhibits A-C were admitted as evidence. The administrative law judge took official notice of the administrative record.

ISSUES:

Has Mr. Mowery been overpaid REGULAR UI benefits?
Was the penalty properly imposed?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Mr. Mowery filed a claim for UI benefits with an effective date of September 15, 2019. His weekly benefit amount for that claim year was \$376.00. Mr. Mowery filed another initial claim effective September 13, 2020. His weekly benefit amount for that claim year was \$493.00.

When he established each claim, Mr. Mowery agreed to read the IWD UI Handbook. The handbook includes instructions for properly filing claims and informs claimants that failure to follow the instructions could result in a denial or overpayment of benefits. The handbook also informs claimants that they should call IWD customer service for help if they do not understand the information in the handbook.

With respect to reporting earnings, the handbook states:

Gross earnings or gross wages are your earnings before taxes or other payroll deductions are made. Earnings or wages must be reported on the weekly claim during the week the wages are earned, not when the wages are paid. Earnings must be reported even if you have not yet received the payment. To calculate the amount to report, multiply the number of hours you worked by your hourly wage.

Example: 10 hours X \$12.00/hour = \$120.00 in gross earnings

You should report the full gross amount of earnings and we will calculate any deductions. Deductions and/or earnings are calculated differently depending on the type of income. See the general guidelines on deductibility below.

The handbook also provides in part:

Preparing to File a Weekly Claim

You should have the following information available when filing your weekly claim:

- SSN
- PIN
- Total amount of gross wages (before deductions) earned during the week
- Total amount of gross holiday pay, vacation and severance, if applicable

In addition, each week Mr. Mowery would complete a weekly continued claim, he would see a screen online which provided:

It is important that you answer all questions truthfully.

WARNING: Attempting to claim and receive unemployment insurance benefits by entering false information can result in loss of benefits, fines and imprisonment.

Before completing his weekly continued claim each week, Mr. Mowery had to check a box that stated he understood the warning message above and wished to proceed. When filing a weekly claim, Mr. Mowery was instructed to answer the question "Did you work during the week of Sunday, [month day] through Saturday, [month day]?" Mr. Mowery was also instructed to report wages by entering "the gross amount 'rounded to the nearest dollar.'"

Mr. Mowery has worked for employer, Jenson Crane Service Inc, as a full-time crane rigger since 2013. The employer pays him about \$20.00 per hour. In the 2019 claim year, Mr. Mowery filed weekly claims for 21 weeks between September 15, 2019 and September 12, 2020. Department's Exhibit B4 – B4(3) In relevant part, Mr. Mowery reported earning weekly wages as follows:

- \$350.00 for the week of September 22-28, 2019,
- \$50.00 for the week of September 29, 2019 through October 5, 2019,
- \$350.00 for the week of October 6-12, 2019,
- \$100.00 for the week of November 24-30, 2019,
- \$40.00 for the week of December 22-28, 2019,
- \$350.00 for the week of March 29, 2020 through April 4, 2020,
- \$220.00 for the week of April 5-11, 2020,
- \$100.00 for the week of April 19-25, 2020, and
- \$0.00 each week for the weeks of August 30, 2020 through September 5, 2020, and September 6-12, 2020. *Id.*

Based on the wages he reported, IWD paid Mr. Mowery REGULAR (state) UI benefits in the total gross amount of \$2,854.00, broken out as follows:

- \$120.00 for the week of September 22-28, 2019,
- \$376.00 for the week of September 29, 2019 through October 5, 2019,
- \$120.00 for the week of October 6-12, 2019,
- \$370.00 for the week of November 24-30, 2019,
- \$376.00 for the week of December 22-28, 2019,
- \$120.00 for the week of March 29, 2020 through April 4, 2020,
- \$250.00 for the week of April 5-11, 2020,
- \$370.00 for the week of April 19-25, 2020, and
- \$376.00 each week for the weeks of August 30, 2020 through September 5, 2020, and September 6-12, 2020. *Id.*

IWD conducted an audit of Mr. Mowery 2019 claim in January 2021 and asked the employer to report his weekly gross wages from August 30 through October 3 in 2020 to IWD. Department's Exhibit A1. The employer reported Mr. Mowery's weekly gross wages to IWD in January 2021. *Id.* In relevant part, the employer reported that Mr. Mowery earned vacation pay in the gross amount of \$426.36 for the week of August 30, 2020 through September 5, 2020, and holiday pay in the gross amount of \$155.04 for the week of September 6-12, 2020. *Id.*

In the 2020 claim year, Mr. Mowery filed weekly claims for 33 weeks between September 13, 2020 and September 11, 2021. Department's Exhibits B5 – B5(4). Mr. Mowery reported earning \$0.00 each week for all but five of the 33 weeks. *Id.* In relevant part, based on the wages he reported, IWD paid Mr. Mowery \$493.00 each week for 18 weeks between October 4, 2020 and February 6, 2021, and \$246.96 for the week of February 7-13, 2021 for a total gross amount of \$9,120.96. *Id.*

IWD conducted an audit of Mr. Mowery's 2020 claim in July 2021 and asked the employer to report his weekly gross wages from December 27, 2020 through April 3, 2021 to IWD. Department's Exhibit A1(2). The employer reported Mr. Mowery's weekly gross wages to IWD. *Id.* In relevant part, the employer reported that Mr. Mowery earned wages in the gross amount of \$620.16 and holiday pay in the gross amount of \$155.04 for the week of December 27, 2020 through January 2, 2021, and wages in the gross amount of \$775.20 each week for 6 weeks between January 3, 2021 through February 13, 2021. *Id.*

Based on the difference between what Mr. Mowery reported on his weekly claims in the 2019 and 2020 claim years and what the employer reported to IWD, in March 2022 IWD asked the employer to report Mr. Mowery's weekly gross wages from September 23, 2018 through December 25, 2021 to IWD. Department's Exhibits A9 – A9(3). Mr. Mowery had also filed an

initial claim effective April 1, 2018. The employer reported Mr. Mowery's weekly gross wages to IWD. *Id.* In relevant part, the employer reported that Mr. Mowery earned weekly wages as follows:

- \$855.70 for the week of September 22-28, 2019,
- \$151.28 for the week of September 29, 2019 through October 5, 2019,
- \$642.94 for the week of October 6-12, 2019,
- \$151.28 in holiday pay for the week of November 24-30, 2019,
- \$151.28 in holiday pay for the week of December 22-28, 2019,
- \$680.77 for the week of March 29, 2020 through April 4, 2020,
- \$605.12 for the week of April 5-11, 2020,
- \$283.66 for the week of April 19-25, 2020, and
- \$426.36 in vacation pay for the week of August 30, 2020 through September 5, 2020, and
- \$155.04 in holiday pay for the week of September 6-12, 2020. *Id.*

On March 31, 2022, Ms. Sills-Campos mailed Mr. Mowery a preliminary audit, which stated that he may have been overpaid benefits in the gross amount of \$14,151.96 between September 22, 2019 and February 13, 2021, because he did not report and/or incorrectly reported wages earned with the employer. Department's Exhibit A11 – A11(3). The letter also informed Mr. Mowery that an overpayment may result in consequences including a 15 percent penalty. *Id.*

Mr. Mowery participated in the scheduled April 8, 2022 telephone interview with Ms. Sills-Campos. Department's Exhibit A2 – A2(2). Mr. Mowery did not dispute the overpayment in the 2019 claim year or provide evidence that the wages reported by the employer for that claim year were inaccurate. *Id.* Mr. Mowery told Ms. Sills-Campos that he had made mistakes when he reported his weekly wages in that claim year and he accepted responsibility for his mistakes. *Id.* Mr. Mowery told Ms. Sills-Campos that he was more concerned about the 2020 claim year because he was not able to work during that claim year due to a workplace injury and he was receiving worker's compensation (comp) benefits. *Id.* Mr. Mowery told Ms. Sills-Campos that the employer had told him that he could receive UI benefits during the time he was injured. *Id.* Mr. Mowery also stated that he did not know that he was supposed to report worker's comp benefits when he filed his weekly UI claims. *Id.*

After the telephone interview, Mr. Mowery sent Ms. Sills-Campos a letter from the employer stating that he had been injured at work on October 2, 2020, he began light duty on October 6, 2020, and he worked 40 hours each week until April 13, 2021 when he released to full duty. Department's Exhibit A12. Ms. Sill-Campos and Mr. Mowery spoke again on April 15, 2022. Department's Exhibit A2(2). Mr. Mowery admitted that he had not reported his wages in the 2020 claim year. *Id.* Mr. Mowery stated that the reason for his lack of reporting was he did not know how to calculate his wage, the medicines he took for his injury clouded his judgement, and he had made a mistake. *Id.*

During the hearing, Mr. Mowery testified that during the 2019 claim year he had estimated his wages each week and during the 2020 claim year he did not pay attention when he filed his weekly claims. Mr. Mowery admitted that the employer was paying him for 40 hours of work each week in the 2020 claim year during the time he was injured. However, Mr. Mowery testified that he was not working during that time, despite the employer's saying the opposite in its letter to IWD.

IWD determined that for the 10 weeks between September 22, 2019 and September 12, 2020, even though Mr. Mowery had received REGULAR (state) UI benefits in the gross amount of \$2,854.00, he was only entitled to REGULAR (state) UI benefits in the gross amount of \$1,459.00, broken out as follows:

- \$0.00 for the week of September 22-28, 2019,
- \$319.00 for the week of September 29, 2019 through October 5, 2019,
- \$0.00 for the week of October 6-12, 2019,
- \$319.00 in holiday pay for the week of November 24-30, 2019,
- \$319.00 in holiday pay for the week of December 22-28, 2019,
- \$0.00 for the week of March 29, 2020 through April 4, 2020,
- \$0.00 for the week of April 5-11, 2020,
- \$187.00 for the week of April 19-25, 2020, and
- \$0.00 for the week of August 30, 2020 through September 5, 2020, and
- \$315.00 in holiday pay for the week of September 6-12, 2020. Department's Exhibit A10.

IWD determined that Mr. Mowery was overpaid REGULAR (state) UI benefits in the gross amount of \$1,395.00 (\$2,854.00 - \$1,459.00) for those 10 weeks because he did not accurately report his wages. *Id.*

In addition to the overpayment, the department assessed a 15 percent penalty because the department determined that Mr. Mowery had intentionally misrepresented or omitted his wages to collect UI benefits. Ms. Sills-Campos testified that she did not find Mr. Mowery's reasons for incorrectly reporting his wages credible since he had filed UI claims in Iowa since 2014 so he should have known the rules.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes IWD did correctly establish and calculate an overpayment of UI benefits, and IWD did not correctly impose a 15 percent penalty due to misrepresentation.

Iowa Code section 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.

In this case, Mr. Mowery estimated his wages each week instead of reporting his hours worked times his hourly pay for 10 weeks between September 22, 2019 and September 12, 2020. Mr. Mowery admitted as such to Ms. Sills-Campos in the telephone interview, and he did so again during the hearing. As a result, Mr. Mowery was overpaid REGULAR (state) UI benefits in the gross amount of \$1,395.00 for which he was not entitled. IWD correctly calculated the overpayment.

IWD is authorized to impose an administrative penalty when it determines that a claimant has within the thirty-six preceding calendar months, willfully and knowingly failed to disclose a material fact with the intent to obtain unemployment benefits to which the individual is not entitled. Iowa Code section 96.5(8).

Iowa Code section 96.16(4)(a) and (b) provide in part:

4. 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.

"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. Iowa Admin. Code r. 871-25.1.

"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. Iowa Admin. Code r. 871-25.1

Based on the evidence presented, Mr. Mowery did not intentionally misrepresent or omit wages when he filed his weekly claims for 10 weeks between September 22, 2019 and September 12, 2020. Mr. Mowery was careless and did not pay attention when he reported his estimated wages each week. However, his mistaken reporting due to carelessness does not rise to the level of fraud or misrepresentation. Since the department has not established that Mr. Mowery misrepresented or intentionally omitted wages when he filed his weekly claims for 10 weeks between September 22, 2019 and September 12, 2020, the imposition of the 15 percent penalty due to misrepresentation is not warranted.

DECISION:

The April 19, 2022 (reference 02) UI decision is MODIFIED IN FAVOR OF THE APPELLANT, Mr. Mowery. Mr. Mowery has been overpaid REGULAR (state) UI benefits in the gross amount of \$1,395.00. IWD incorrectly imposed an administrative penalty due to misrepresentation, and the administrative penalty is not warranted and removed.



Daniel Zeno
Administrative Law Judge
Iowa Department of Inspections and Appeals
Administrative Hearings Division, UI Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

September 15, 2022
Decision Dated and Mailed

dz/mh

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 adquiera 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.