

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHELLE L MCKINNEY
Claimant

APPEAL 19A-UI-07286-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 08/02/09
Claimant: Appellant (1)**

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, filed an appeal from the September 5, 2019 (reference 05) Iowa Workforce Development (“IWD”) unemployment insurance decision which concluded the claimant was overpaid unemployment insurance benefits because she failed to accurately report earnings while concurrently filing weekly claims for unemployment insurance benefits. IWD also imposed a 15% administrative penalty due to misrepresentation.

The parties were properly notified of the hearing. A hearing was held in Des Moines, Iowa, on October 25, 2019. The claimant, participated in the hearing. Kevan Irvine, Investigator, participated on behalf of IWD. IWD Exhibits One through Five were admitted. The administrative law judge took official notice of the claimant’s unemployment insurance benefits records.

ISSUES:

Whether IWD correctly determined the claimant was overpaid unemployment insurance benefits and if the overpayment amount was correctly calculated.
Whether IWD properly imposed a penalty based upon the claimant’s misrepresentation.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant filed a claim for unemployment insurance benefits with an effective date of August 2, 2009.

When the claim was established, the claimant was directed to read the Unemployment Insurance Handbook. The Unemployment Insurance 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 don’t understand the information in the handbook.

With respect to "Reporting Earnings," the handbook states:

Gross earnings/wages (before tax and payroll deductions) 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 the payment has not been received yet. To calculate the amount to report, the individual should multiply the number of hours worked by the hourly wage. Individuals should report the full gross amount of earnings and IWD will calculate any deductions. If an individual earns \$15.00 over their WBA, they will not receive a benefit payment.

The handbook also provides in part:

Overpayment

Individuals are responsible for repaying any benefits they were not eligible to receive. Future UI benefit payments are withheld until the overpayment has been recovered in full. If the individual is not making attempts to repay the overpayment, the debt may be recovered by withholding state and federal tax refunds, casino and lottery winnings, and vendor payments. Overpayments caused by fraud include a 15% penalty.

The handbook also alerts claimants to consequences for providing false or fraudulent statements to collect benefits:

Fraud is knowingly providing false information or withholding information to receive UI benefits. Fraudulently collecting UI benefits is a serious offense. It can lead to severe penalties, which include:

- criminal prosecution
- denial of future benefits by administrative penalty
- repayment of fraudulently collected UI benefits plus a 15 percent penalty
- wages garnishments and liens
- interception of state and federal tax refunds

In addition, each week the claimant would complete a weekly continued claim, she 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 a weekly continued claim each week, a claimant has to check a box that states she understands the warning message above and wishes to proceed.

In this case, the claimant made most of her weekly claims by phone to IWD Representative Jane Connor.

IWD conducted an audit following a border check and discovered that the claimant received wages from All State Nursing and MGA Healthcare Staffing from December 27, 2009 to June 19, 2010, but failed to report the full amount of wages received. IWD contacted the employers, All State Nursing and MGA Healthcare Staffing on September 3, 2010, to verify the claimant's wages earned with those employers, (Department Exhibits 2-6 and 2-7). The employers confirmed the claimant performed work for them.

A review of the administrative file reflects the claimant did not report the same wages to the employer. Each week, from April 10, 2010, through July 3, 2010, the claimant reported she earned various amounts in wages, when she filed her weekly continued claim (Department Exhibit Five), even though she was performing work for more hours than reported, with the exception of the weeks ending June 5, 2010, when she was underpaid by \$22.00 and June 19, 2010, when she was underpaid by \$43.00.

As a result of the employers' verification of wages, Ms. Connor also contacted the claimant. The claimant was mailed a preliminary audit on October 27, 2010, which stated she may have been overpaid benefits in the amount of \$1,129.00, for failing to report her wages (Department Exhibit 2-8). The letter also informed her that an overpayment may result in consequences.

The claimant contacted Ms. Connor November 16, 2010, in response to the letter. The claimant did not dispute the overpayment amount or provide evidence that the wages reported by the employer were inaccurate. She questioned the employers' records and the fact her actual time sheets were not submitted but did not provide any information or evidence that the records were incorrect. The claimant stated she rarely called in her weekly claim using the phone system but instead called Ms. Connor who entered her information.

The claimant's weekly benefit amount was \$423.00 (Department Exhibit 4-1). Because the claimant did not accurately report her wages during this same period, an overpayment of \$1,129.00 was determined by IWD (Department Exhibit 3-5). The agency established the overpayment based upon the following incorrect payments made to the claimant: (Department Exhibit 3-5)

WEEK ENDING	WAGES REPORTED	WAGES EARNED	BENEFITS PAID	BENEFITS ENTITLED	OVERPAYMENT
04/10/10	\$0.00	\$0.00	\$423.00	\$423.00	\$0.00
04/17/10	\$160.00	\$564.00	\$393.00	\$0.00	\$393.00
04/24/10	\$640.00	\$954.00	\$0.00	\$0.00	\$0.00
05/01/10	\$400.00	\$660.00	\$153.00	\$0.00	\$153.00
05/08/10	\$960.00	\$1,404.00	\$0.00	\$0.00	\$0.00
05/15/10	\$0.00	\$738.00	\$448.00	\$0.00	\$448.00
05/22/10	\$640.00	\$726.00	\$0.00	\$0.00	\$0.00
05/29/10	\$999.00	\$1,359.00	\$0.00	\$0.00	\$0.00
06/12/10	\$160.00	\$360.00	\$368.00	\$168.00	\$200.00
06/26/10	\$700.00	\$852.00	\$0.00	\$0.00	\$0.00
07/03/10	\$385.00	\$564.00	\$0.00	\$0.00	\$0.00
			SUBTOTAL:		\$1,129.00
			15% Penalty		\$169.00
			NET TOTAL		\$1,298.00

In addition to the overpayment, a 15% penalty was imposed, due to the overpayment arising from the claimant's misrepresentation or intentional omission of wages to collect benefits. On four occasions, the claimant responded to her weekly continued claim that she had not performed work for the number of hours reported by the employer and did not earn as much in wages as the employer reported. The claimant does not dispute the overpayment amount

specifically but argued that a penalty should not be imposed because the information provided by the employer was incorrect.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes IWD did correctly establish and calculate the claimant's overpayment of benefits, and did correctly impose a 15% penalty due to the claimant's 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.

b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge is persuaded the claimant knew or should have known she must report all wages earned each week that she sought to claim unemployment insurance benefits, and that failure to properly do so, could result in an overpayment, which she must repay. However, the claimant underreported her wages for the period of April 10, 2010 through July 3, 2010, and misrepresented that she was not fully employed as she filed weekly continued claims for unemployment insurance benefits during the same time (Department Exhibit 3-5). No evidence was presented that the wages reported by the employer to IWD were inaccurate or incorrect. Consequently, the claimant was able to collect both wages and unemployment insurance benefits each week. As a result, the claimant was overpaid benefits in the amount of \$1,129.00, to which she was not entitled (Department Exhibit 3-5). The administrative law judge concludes therefore, that the overpayment was correctly calculated.

The next issue is whether the imposition of a 15% penalty due to fraud or misrepresentation was warranted.

The Department is authorized to impose an administrative penalty when it determines that a claimant has within the thirty-six preceding calendar months, willfully and knowing 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, the administrative law judge concludes the claimant knowingly omitted material information to IWD when she failed to correctly report her wages earned when she filed for unemployment insurance benefits. On four separate occasions, the claimant reported she earned various amounts in wages but in fact performed more work and earned more wages than she reported (Department Exhibit 3-5). This was blatantly false. The claimant's repeated and intentional concealment of wages led to the claimant receiving an overpayment of unemployment insurance benefits.

Therefore, the administrative law judge concludes the calculated overpayment was correct, and the claimant knowingly omitted material information to IWD when she failed to correctly report wages earned for the period of April 10, 2010 through July 3, 2010, and concurrently filed for unemployment insurance benefits. Accordingly, the administrative law judge concludes the overpayment was correctly calculated and the application of a 15% penalty due to misrepresentation was warranted.

DECISION:

The September 5, 2019 (reference 05) unemployment insurance decision is affirmed. The claimant was overpaid benefits. IWD correctly imposed the administrative penalty due to the claimant's misrepresentation.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/rvs