

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MICHAEL C WILLIAMS**  
Claimant

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**APPEAL 18A-UI-11201-DB**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/07/18**  
**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 November 5, 2018 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that found claimant was overpaid unemployment insurance benefits of \$33,813.80 because claimant incorrectly reported, or failed to report earnings from M D Concrete Co. Inc. between December 12, 2010 and March 31, 2018. IWD imposed a 15% administrative penalty due to misrepresentation. The parties were properly notified of the hearing. An in-person hearing was held on January 9, 2019. The claimant, Michael C. Williams, participated personally and was represented by attorney Kevin P. Shea. IWD was represented by attorney David Steen and participated through witness Sean Clark. IWD Exhibits 1 – 13 were admitted. The administrative law judge took official notice of the claimant’s unemployment insurance benefits records.

**ISSUES:**

Did IWD correctly determine that claimant was overpaid unemployment insurance benefits and was the overpayment amount correctly calculated?  
Did IWD properly impose a penalty based upon claimant’s misrepresentation?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant filed initial claims for unemployment insurance benefits with effective dates of December 12, 2010, December 11, 2011, December 30, 2012, January 12, 2014, January 11, 2015, January 10, 2016, January 8, 2017, and January 7, 2018. IWD conducted an audit and discovered that claimant earned wages from M D Concrete Co. Inc. during the period of December 12, 2010 through March 31, 2018 but failed to report or incorrectly reported the wages earned.

IWD spoke to the employer’s representatives, Shelly Davidson and Rob McAllister, regarding the amount of wages claimant earned during the period investigated. An employer recheck of

wage records was completed by the employer and listed the gross wages earned by claimant from December 12, 2010 through March 31, 2018 for the weeks in which the claimant filed his weekly-continued claims for benefits. See Exhibit 2. The wages earned by claimant (rounded to the nearest dollar), the wages reported to IWD by the claimant, the amount of benefits paid to the claimant, the amount of benefits claimant was entitled to receive, the amount of underpayment of benefits, and the amount of overpayment of benefits for each weekly-continued claim filed by the claimant between December 12, 2010 and March 31, 2018 are listed below.

Week Ending	Wages Reported By		UI Benefits	UI Benefits	Underpayment	Overpayment
	Claimant	Employer	Paid	Entitled		
12/18/10	0	569	376	0		376
12/25/10	0	420	376	0		376
01/01/11	0	595	376	0		376
01/08/11	0	551	376	0		376
01/15/11	0	333	376	137		239
01/22/11	0	376	376	94		282
01/29/11	0	569	376	0		376
02/05/11	0	105	376	365		11
02/12/11	0	298	376	172		204
02/19/11	0	385	376	85		291
02/26/11	0	341	376	129		247
03/05/11	0	438	376	0		376
03/12/11	0	420	376	0		376
03/19/11	0	831	376	0		376
03/26/11	0	639	376	0		376
04/02/11	0	753	168.80	0		168.80
04/09/11	755	569	0	0	0	0
12/10/11	999	376	0	94	94	0
12/17/11	999	543	0	0		0
12/24/11	0	210	385	271		114
12/31/11	0	184	385	297		88
01/07/12	0	210	385	271		114
01/14/12	0	210	385	271		114
01/21/12	0	245	385	236		149
01/28/12	0	280	385	201		184
02/04/12	0	219	385	262		123
02/11/12	0	368	385	113		272
02/18/12	0	280	385	201		184
02/25/12	0	298	385	183		202
03/03/12	0	280	385	201		184
03/10/12	0	429	385	0		385
03/17/12	0	411	385	0		385

03/24/12	0	568	385	0		385
03/31/12	0	595	385	0		385
04/07/12	0	700	385	0		385
01/05/13	0	302	396	193		203
01/12/13	0	454	396	0		396
01/19/13	0	671	396	0		396
01/26/13	0	340	396	155		241
02/02/13	0	350	396	145		251
02/09/13	0	444	396	0		396
02/16/13	0	482	396	0		396
02/23/13	0	435	396	0		396
03/02/13	0	340	396	155		241
03/09/13	0	359	396	136		260
03/16/13	0	926	396	0		396
03/23/13	0	690	396	0		396
03/30/13	0	548	396	0		396
01/18/14	0	668	408	0		408
01/25/14	0	688	408	0		408
02/01/14	0	619	408	0		408
02/08/14	0	648	408	0		408
02/15/14	0	590	408	0		408
02/22/14	0	403	408	107		301
03/01/14	0	501	408	0		408
03/08/14	0	717	408	0		408
03/15/14	0	599	408	0		408
03/22/14	0	899	408	0		408
03/29/14	0	899	408	0		408
04/05/14	0	817	408	0		408
11/29/14	0	540	408	0		408
12/06/14	0	901	408	0		408
12/13/14	0	732	408	0		408
12/20/14	0	608	408	0		408
12/27/14	820	417	0	93	93	0
01/03/15	0	0	408	408	0	0
01/10/15	0	439	408	0		408
01/17/15	0	811	416	0		416
01/24/15	0	631	416	0		416
01/31/15	0	574	416	0		416
02/07/15	0	552	416	0		416
02/14/15	0	552	416	0		416

02/21/15	0	473	416	0		416
02/28/15	0	676	416	0		416
03/07/15	0	360	416	160		256
03/14/15	0	563	416	0		416
03/21/15	0	867	416	0		416
01/02/16	0	270	416	250		166
01/09/16	0	676	416	0		416
01/16/16	0	600	431	0		431
12/24/16	0	539	431	0		431
12/31/16	0	609	431	0		431
01/07/17	0	749	431	0		431
01/14/17	0	703	447	0		447
01/21/17	0	375	447	183		264
01/28/17	0	726	447	0		447
02/04/17	0	867	447	0		447
02/11/17	0	0	447	447	0	0
02/18/17	0	667	447	0		447
02/25/17	0	843	447	0		447
03/04/17	0	621	447	0		447
03/11/17	0	761	447	0		447
12/30/17	0	0	447	447	0	0
01/06/18	0	457	447	101		346
01/13/18	0	340	455	228		227
01/20/18	0	539	455	0		455
01/27/18	0	562	455	0		455
02/03/18	0	550	455	0		455
02/10/18	0	304	455	264		191
02/17/18	0	492	455	0		455
02/24/18	0	386	455	182		273
03/03/18	0	375	455	193		262
03/10/18	0	258	455	310		145
03/17/18	0	831	455	0		455
03/24/18	0	913	455	0		455
03/31/18	0	562	455	0		455
				Sub-total	187	34,000.8
				Net total		33,813.80

A net overpayment of \$33,813.80 was determined by IWD. Claimant's reason for failing to report and incorrectly reporting wages earned during this period was because his supervisor, Jarrod Marks, told him not to report wages to IWD since he was banking his hours and not being paid the wages at that time. Claimant did not consult with IWD prior to filing his weekly-

continued claims each year for help in clarifying how he was to report gross wages earned. Claimant did not read the unemployment insurance benefits handbook that instructed him to report wages when earned, not when paid. See Exhibit 12. Claimant filed each of his weekly-continued claims personally.

#### **REASONING AND CONCLUSIONS OF LAW:**

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

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

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, 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. 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 Admin. Code r. 871- 25.1— Definitions.

“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.

This was not an incident of mistake or carelessness. Claimant intentionally and knowingly omitted material information by failing to correctly report his wages earned from December 12, 2010 to March 31, 2018 when he filed for unemployment insurance benefits. Claimant's intentional concealment of wages earned was done in order to obtain unemployment insurance benefits for himself and led to him receiving a net overpayment of unemployment insurance benefits. The net overpayment amount calculated by IWD is correct. Claimant is overpaid unemployment insurance benefits of \$33,813.80 between December 12, 2010 and March 31, 2018. The penalty of 15% of the amount of the fraudulent overpayment was correctly assessed by IWD.

**DECISION:**

The November 5, 2018 (reference 01) unemployment insurance decision is affirmed. The claimant is overpaid unemployment insurance benefits of \$33,813.80 between December 12, 2010 and March 31, 2018 because he incorrectly or failed to report earnings from M D Concrete Co Inc. IWD correctly imposed a 15% administrative penalty due to the claimant's misrepresentation.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

db/rvs