

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building, 4TH Floor
Des Moines, Iowa 50319
eab.iowa.gov**

LORI K GRAVES

Claimant

and

IWD INTEGRITY BUREAU

Employer

: **APPEAL NUMBER: 24B-UI-02778**
: **ALJ HEARING NUMBER: 24A-UI-02778**
:
: **EMPLOYMENT APPEAL BOARD**
: **DECISION**
:
:
:

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.3-7 96.16-4

DECISION

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds the administrative law judge's decision is correct. With the following modification, the administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED** with the following **MODIFICATION**:

The Board modifies the Reasoning and Conclusions of Law in the following three ways.

1. The Board **strikes** the third paragraph of page 4 of the Administrative Law Judge's decision (the paragraph ending with "Iowa Code section 96.5(8).").
2. The Board **strikes** the second to the last paragraph on page 4 of the Administrative Law Judge's decision **and inserts** in that location the following discussion:

The rules of the department have the following 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.

“Fraudulent activity” means actions based on or in the spirit of fraud.

...

“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.

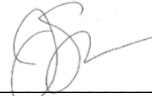
871 IAC 25. This definition of “fraud” includes “intentional misuse of facts... to obtain or increase unemployment insurance benefits”, “a false representation [by] false or misleading statements,” and also “concealment or failure to disclose...which deceives and is intended to deceive.” The problem is that “a false representation” may mean no more than “untrue.” If this were the case this second prong would simply swallow the other two. But as the *Oxford English Dictionary* explains the word “false” has two primary meanings. One is “contrary to what is true, erroneous” and the other is “mendacious, deceitful, treacherous.” Both these primary meanings have existed side-by-side for about as long as the word has been in English. Since, as we noted, a meaning of “untrue” would make the rest of the rule surplusage we take “false” in the definition of “fraud” to mean “mendacious, deceitful.” This approach is also consistent with interpreting words in context (“*noscitur a sociis*”), and with the basic idea that “fraud” encompasses more than the mere fact of inaccuracy. This gloss, moreover, is consistent with the administrative penalty provisions not directly at issue in this case. Iowa Code §96.5(8)(“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”); 871 IAC 25.9(2) (“deliberate falsification for the purpose of obtaining or increasing unemployment insurance benefits”).

Having clarified “fraud” we examine “misrepresentation.” This definition could cover just saying something that is inaccurate. To “omit material information” may occur all the time in good faith. The same is true of presenting something at odds with the truth. Given the use of “misleading” and “deceiving” in the definition of misrepresentation, we think that the definition means to describe acting intentionally with knowledge of the inaccuracy of the representation or omission. Unintentional, or good faith misunderstandings, would not be misrepresentation.

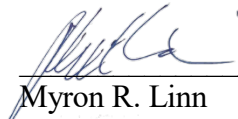
Putting this together with the statute we see that a misrepresentation can authorize a lien under Iowa Code §96.16(4)(a) and also a cause a claim lock under Code §96.5(13), which uses the word “misrepresentation.” The 15% penalty is limited to cases of “a fraudulent overpayment.” To the extent that the definitions of “fraud” and “misrepresentation” differ in the Iowa Code, then different effects may follow. While this seems awkward we have to make some distinction between the two if we are to give effect to the different words use in the statute, and the use of different definitions in the regulations. As we read the definitions, and in light of the usual requirements in criminal fraud actions, it seems that the main difference would be that for misrepresentation there need only be scienter, *i.e.* knowledge of falsity, but for fraud there must be *in addition* the specific intent to deceive in order to enhance benefit rights. Even assuming this is the case we find that the State in this case has proven by a preponderance that Claimant filed multiple weekly claims for unemployment benefits knowing that she was not properly reporting her wages, and with the specific intent to deceive the agency in order to get money she was not entitled to.

In particular we note that the agency records show that the Claimant earned \$97,441.91 in the base period of this claim, and that \$90,647.96 of that – or 93% - was at the school. Further, the exhibits show that she failed to report almost 97% of her total earnings during the overpayment period at issue in these cases. She meanwhile received \$12,506 in *regular state benefits without the federal add-ons*, while having earned only less than \$6,800 in the job she was laid off from during the base period. It is not credible that a claimant would think that she need not report the wages that accounted for over 90% of her income before filing for benefits, or that she should receive almost twice the amount in regular state benefits than she would have made had she worked all year at the part-time job. This bolsters our agreement with the Administrative Law Judge in his determination that the Claimant is not credible in her denials of any wrongful intent in this case.

3. The Board **corrects** the overpayment amount in the Decision and Order to read \$12,506.00, rather than 12,500.00.



James M. Strohman



Myron R. Linn



Ashley R. Koopmans

RRA/mes

DATED AND MAILED May 8, 2024