

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ADRIAN JOHNSON
Claimant

APPEAL 21A-UI-11403-DG-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 03/29/20
Claimant: Appellant (1)

Iowa Code § 96.3(7) – Overpayment of Benefits
Iowa Code § 96.16(4) – Offenses and Misrepresentation

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the April 16, 2021 unemployment insurance decision that found claimant was overpaid for Lost Wage Assistance Program (LWAP) in the amount of \$1,800.00 for 6 weeks ending September 5, 2020. The decision also found that the claimant was assessed a 15% penalty due to misrepresentation.

The parties were properly notified of the hearing. A telephone hearing was held on September 16, 2021. The claimant participated personally. Daniel Noonan, Investigator II participated on behalf of IWD. IWD Exhibits 1-15 were admitted. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUE:

Is the claimant overpaid LWA for six weeks ending January 30, 2021?
Was a penalty properly imposed?

FINDINGS OF FACT:

The overpayment issue in this case was created by a disqualification decision that has now been affirmed. The claimant received LWAP payments in the amount of \$1800.00 for the 6-week period ending September 5, 2020.

REASONING AND CONCLUSIONS OF LAW:

On August 8, 2020, President Trump signed the *Memorandum on Authorizing the Other Needs Assistance Program for Major Disaster Declarations Related to Coronavirus Disease 2019*. It provided in pertinent part:

“Sec 4. Assistance Program for Lost Wages.

(a) For purposes of this memorandum, “State” includes the territories and the District of Columbia, and “Governor” includes the chief executive thereof.

- (b) To help meet the needs of the American people during this unprecedented and continuously evolving public health crisis, the Secretary of Homeland Security (Secretary), acting through the FEMA Administrator, is authorized to make available other needs assistance for lost wages, in accordance with section 408(e)(2) of the Stafford Act (42 U.S.C. 5174(e)(2) (“lost wages assistance”), to the people of a State, including the members of any tribe residing therein, if the Governor requests lost wages assistance and agrees to administer delivery and provide adequate oversight of the program, for a major disaster I declared pursuant to section 401 of the Stafford Act (42 U.S.C. 5170) for COVID-19, under the following conditions:
 - (i) the Governor requests from the FEMA Administrator a grant for lost wages assistance pursuant to 42 U.S.C. 5174(f)(1)(A) and agrees to the cost-sharing requirement of 42 U.S.C. 5174(g)(2); and
 - (ii) the Governor administers delivery of financial assistance for lost wages in conjunction with the State’s unemployment insurance system.
- (c) In exercising this authority, the Secretary, acting through the FEMA Administrator, shall, subject to the limitations above, approve a lost wages assistance program that authorizes the Governor to provide a \$400 payment per week, which shall reflect a \$300 Federal contribution, to eligible claimants from the week of unemployment ending August 1, 2020.
- (d) For purposes of this memorandum, the term “Eligible claimants” means claimants who:
 - (i) receive, for the week lost wages assistance is sought, at least \$100 per week of any of the following benefits:
 - (A) Unemployment compensation, including Unemployment Compensation for Federal Employees (UCFE) and Unemployment Compensation for Ex-Service members (UCX), under section 8501 of title 5, United States Code;
 - (B) Pandemic Emergency Unemployment Compensation (PEUC), under section 2107 of the CARES Act;
 - (C) Pandemic Unemployment Assistance (PUA), under section 2102 of the CARES Act;
 - (D) Extended Benefits (EB), under section 3304 of title 26, United States Code;
 - (E) Short-Time Compensation (STC), under section 3306(v) of title 26, United States Code;
 - (F) Trade Readjustment Allowance (TRA), under sections 2291 through 2293 of title 19, United States Code; and
 - (G) Payments under the Self-Employment Assistant (SEA) program, under section 3306(t) of title 26, United States Code; and
 - (ii) provide self-certification that the claimant is unemployed or partially unemployed due to disruptions caused by COVID-19.
- (e) The authority vested in the Secretary, acting through the FEMA Administrator, to approve lost wages assistance shall not be construed to encompass authority to approve other forms of assistance.

The state is responsible for refunding to FEMA any unobligated balances that FEMA paid that are not authorized to be retained per 2 C.F.R. 200.343(d) and the state is also responsible for recovering assistance awards from claimants obtained fraudulently. See UIPL No. 27-20 Change 1 dated August 17, 2020 citing 44 C.F.R. 206.120(f)(4 and 5). 44 C.F.R. § 206.16 provides as follows:

- (a) The applicant must agree to repay to FEMA (when funds are provided by FEMA) and/or the State (when funds are provided by the State) from insurance proceeds or recoveries from any other source an amount equivalent to the value of the assistance provided. In no event must the amount repaid to FEMA and/or the State exceed the amount that the applicant recovers from insurance or any other source.
- (b) An applicant must return funds to FEMA and/or the State (when funds are provided by the State) when FEMA and/or the State determines that the assistance was provided erroneously, that the applicant spent the funds inappropriately, or that the applicant obtained the assistance through fraudulent means.

Iowa Code § 96.3(7)a provides:

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.

The claimant engaged in fraud and misrepresentation pursuant to Iowa Code § 96.16(4) when he provided false and misleading information about his business to the department which was used in determining his initial eligibility for benefits, and the LWA payments he received during that time frame stemmed from. The next issue is whether the 15% penalty was properly imposed. The administrative law judge finds that it was.

42 U.S.C. Section 503(a)(11) provides in pertinent part:

The Secretary of Labor shall make no certification for payment to any State unless he finds that the law of such State, approved by the Secretary of Labor under the Federal Unemployment Tax Act (26 U.S.C.A. § 3301 et seq.) includes provisions for –

(11)(A) At the time the State agency determines an erroneous payment from its unemployment fund was made to an individual due to fraud committed by such individual, the assessment of a penalty on the individual in an amount not less than 15 percent of the amount of the erroneous payment; and

(B) The immediate deposit of all assessments paid pursuant to subparagraph (A) into the unemployment fund of the State.

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

Offenses

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.

Iowa Admin. Code r. 871- 25.1 provides:

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.

While the August 8, 2020, *Memorandum on Authorizing the Other Needs Assistance Program for Major Disaster Declarations Related to Coronavirus Disease 2019* signed by President Trump does not specifically address that States may assess a penalty due to fraud or misrepresentation on any overpayment of LWA benefits, 42 U.S.C. § 503(a)(11)(A) provides that the State shall assess a 15% penalty if the State determines an erroneous payment was made due to fraud.

The claimant intentionally provided misleading information about the wages earned from a business entity, and then intentionally failed to provide the requested information about his business to the department during an audit. His actions constitute fraud and misrepresentation. See Iowa Admin. Code r. 871-25.1. As such, the 15% penalty established in addition to the claimant's \$1,800.00 LWA overpayment amount was proper.

DECISION:

The claimant was overpaid LWA payments in the amount of \$1,800.00 for six weeks ending September 5, 2020. Those payments must be repaid to the agency. A penalty in the amount of 15% of the \$1,800.00 in LWA overpayment was proper and the claimant must repay the penalty as well.



Duane L. Golden
Administrative Law Judge

September 29, 2021
Decision Dated and Mailed

dlg/ol