

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROY E GALINDO
Claimant

APPEAL 19A-UI-00740-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 01/13/19
Claimant: Appellant (1)**

Iowa Code § 96.5(13) – Disqualification due to Outstanding Fraud Overpayment
Iowa Code § 96.16(4) – Offenses and Misrepresentation

STATEMENT OF THE CASE:

The claimant/appellant, Roy E. Galindo, filed an appeal from the January 17, 2019 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision which concluded the claimant was ineligible for unemployment insurance benefits due to an outstanding fraud overpayment balance.

The parties were properly notified of the hearing. A telephone hearing was held on February 12, 2019. The claimant, Roy E. Galindo, participated personally. Kevan Irvine participated on behalf of IWD. IWD Exhibits 1-8 were admitted. The administrative law judge took official notice of the claimant’s unemployment insurance benefits records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant ineligible for benefits due to an outstanding fraud overpayment balance?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On January 13, 2008, the claimant established a claim for unemployment insurance benefits.

A preliminary audit was mailed to the claimant’s address of record on May 13, 2009, directing him to contact IWD by May 26, 2009 about a possible overpayment and discrepancy of wages (Department Exhibit 5-3). He did not respond. In a decision dated June 4, 2009, the agency concluded the claimant had been overpaid benefits in the amount of \$804.00 when he failed to accurately report all wages when making his claim for benefits for the period of September 28, 2008 through December 27, 2008 (Department Exhibit 5). The decision also cited the legal reference for the decision to be Iowa Code § 96.16(4), which applies to misrepresentation. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by June 14, 2009. Because June 14, 2009 was a Sunday, the final day to appeal was extended to Monday, June 15, 2009. The claimant did not appeal the decision and it is final.

The claimant then filed a claim for unemployment insurance benefits with an effective date of January 18, 2009 in response to a temporary layoff (Department Exhibit 6-1). The claimant returned to work thereafter but continued to make weekly continued claims during the period of April 5, 2009 through July 4, 2009 (Department Exhibit 8). A second audit was conducted and a second overpayment in the amount of \$2,739.17 was issued by way of initial decision on December 1, 2009 (Department Exhibit 4-1). The decision also cited the legal reference for the decision to be Iowa Code § 96.16(4), which applies to misrepresentation. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by December 11, 2009. The claimant did not appeal the decision and it is final.

Overpayment statements were mailed to the claimant on September 16, 2009, December 16, 2009, January 18, 2010, February 16, 2010, December 1, 2010, December 1, 2011, November 16, 2016, and December 1, 2016 (Department Exhibit 7).

The claimant then established a claim with an effective date of January 13, 2019. Effective July 1, 2018, a claimant with an overpayment by reason of misrepresentation is disqualified to receive unemployment insurance benefits until the overpayment interest and associated fees and penalties are paid in full. Iowa Code section 96.5(13). To date, the claimant has failed to pay the outstanding overpayment amount owed, including interest, penalties, and lien fees. The current outstanding balance owed is \$2,805.00 (Department Exhibit 2-1).

The claimant denied making the claims for unemployment insurance benefits in 2008 or 2009. He has never notified law enforcement of possible identity theft. The preliminary audit, initial decisions and overpayment statements were mailed to: 100 South 8th Street, Apartment 16 in Carlisle, Iowa. This was a valid mailing address for the claimant, though Mr. Galindo does not recall the period of time he resided at the address. A review of the benefits paid to the claimant reflect that benefits were paid usually through direct deposit, but that on at least two occasions in 2008, the claimant received payment through paper warrants. The claimant had no explanation of who would or could have filed claims on his behalf during that time, except that he dated his office's secretary for five years, and she would have had access to personal information such as his address, social security number and wages. Upon receiving the January 17, 2019 decision which he stated was his first knowledge of the claims or overpayments, he did not contact her to question if she had been filing claims for him.

REASONING AND CONCLUSIONS OF LAW:

This issue at hand is whether the claimant is ineligible for benefits due to an outstanding fraud overpayment balance.

Iowa Code § 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.

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, 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.

"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

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* Assessing the credibility of the witnesses and reliability of the evidence, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes the evidence presented does not support the claimant's assertion that he did not file the claims which led to the overpayments from fraud or misrepresentation, or that he had no knowledge of the fraud/misrepresentation overpayments.

The administrative law judge recognizes the practical limitations of the parties' evidence, given the overpayment in question is over ten years old. However, the credible evidence presented is that the claimant has no history of identity theft, claims were filed and benefits were received during a time that partially coincided with a legitimate lack of work. The administrative law judge is not persuaded the claimant's ex-girlfriend, who was also the office secretary, filed the claims without his knowledge or that he never received any document about the possible overpayment. Mr. Irvine presented 11 different documents sent to the claimant's valid mailing address referencing the audit and overpayments. The provided address of record to IWD matches the claimant's address at the time of filing. The claimant on at least two occasions would have also received paper warrants for payment of unemployment insurance benefits. Therefore, the

administrative law judge concludes that more likely than not, even though it was over ten years ago, the claimant was aware of the claims, benefits paid and overpayments derived from fraud. Iowa Code section 96.5(13) provides:

Overpayment resulting in disqualification. If the department finds that an individual has received benefits by reason of misrepresentation pursuant to section 96.16, such individual shall be disqualified for benefits until the balance of the benefits received by the individual due to misrepresentation, including all penalties, interest, and lien fees, is paid in full.

Based on the evidence presented, the administrative law judge concludes the claimant currently owes a balance of \$2,805.00 (Department Exhibit 2-1) due to two decisions which found that the claimant was overpaid benefits and engaged in misrepresentation pursuant to Iowa Code § 96.16(4). Because this fraud balance remains unpaid, the claimant is not eligible for benefits at this time.

DECISION:

The January 17, 2019 (reference 01) unemployment insurance decision is affirmed. The claimant is ineligible for benefits. Benefits are withheld until the claimant has paid the unpaid fraud overpayment balance, plus penalties, interest, and lien fees, provided claimant is otherwise eligible.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn