

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ANTHONY J LEONARDI**  
Claimant

**APPEAL 19A-UI-09246-AW-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 01/13/19**  
**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  
Iowa Code §96.6(2) – Filing – Timely appeal

**STATEMENT OF THE CASE:**

Claimant filed an appeal from the November 8, 2019 (reference 03) unemployment insurance decision that found claimant was overpaid benefits. The parties were properly notified of the hearing. A telephone hearing was held on December 18, 2019, at 2:00 p.m. Claimant participated. Iowa Workforce Development (IWD) participated through Kasandra Ellenwood, Investigator II. Department's Exhibits A – K were admitted. Official notice was taken of the administrative record.

**ISSUES:**

Whether claimant's appeal is timely.  
Whether claimant was overpaid benefits.  
Whether a penalty was properly imposed.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to claimant at 4906 Ingersoll Avenue, Apartment 7, Des Moines, Iowa on November 8, 2019. Claimant did not reside at that address, but used it to receive mail during that period of time. Claimant does not know when the decision was received at that address. Claimant entered inpatient treatment on November 12, 2019. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by November 18, 2019. Claimant does not recall when he personally received the decision, but reviewed his mail after being released from inpatient treatment and submitted his appeal at that time. Claimant appealed the decision via mail postmarked November 22, 2019.

The administrative law judge further finds: Claimant filed a claim for unemployment insurance benefits with an effective date of January 13, 2019. When claimant filed his claim, he agreed that he would read and understand the handbook.

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

Gross earnings or gross wages are your earnings before taxes or other payroll deductions are made. Earnings or wages 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 or more over their WBA, they will not receive a benefit payment. (Department's Exhibit H)

The handbook also alerted the claimant 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, fines and imprisonment
- 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 (Department exhibit B4(2)).

IWD conducted an audit and discovered that claimant received wages from Jordison Construction, Inc. and Weitz Co. during the time period of December 30, 2017 through June 1, 2019, but failed to accurately report his wages. IWD contacted Jordison Construction, Inc. and Weitz Co. to verify claimant's wages earned. (Department's Exhibit E) An IWD investigator contacted claimant on November 7, 2019 to discuss the overpayment and potential for a penalty. Claimant did not dispute the overpayment. The claimant stated he did not report the wages because his employer told him to guess what he would make the next week and report that as his earnings.

Claimant's weekly benefit amount was \$386.00. (Department's Exhibit E). Because the claimant did not accurately report his wages from December 30, 2017 through June 1, 2019, IWD determined claimant was overpaid benefits. The agency established the overpayment based upon the following incorrect payments made to the claimant: (Department's Exhibit E)

WEEK ENDING	WAGES REPORTED	WAGES EARNED	BENEFITS PAID	BENEFITS ENTITLED	OVERPAYMENT/ (UNDERPAYMENT)
12/30/17	80.00	0.00	386.00	386.00	
01/06/18	0.00	70.00	386.00	386.00	
01/13/18	0.00	485.00	386.00	0.00	386.00
01/20/18	209.00	25.00	273.00	386.00	(113.00)
01/27/18	25.00	210.00	386.00	272.00	114.00
02/03/18	510.00	0.00	0.00	386.00	(386.00)
02/10/18	0.00	0.00	386.00	386.00	
02/17/18	0.00	0.00	386.00	386.00	
02/24/18	0.00	635.00	386.00	0.00	386.00
03/03/18	635.00	745.00	0.00	0.00	
03/10/18	0.00	655.00	386.00	0.00	386.00
03/17/18	0.00	215.00	386.00	267.00	119.00
03/24/18	90.00	890.00	386.00	0.00	386.00
06/01/19	200.00	576.00	406.00	0.00	406.00
			<b>TOTAL:</b>		1,684.00

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.

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

For the reasons that follow, the administrative law judge concludes the claimant's appeal was timely.

Iowa Code § 96.6(2) provides, in pertinent part: "[u]nless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision."

Iowa Admin. Code r. 871-24.35(1)(a) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

(a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark on the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

The appeal deadline was November 18, 2019. Claimant submitted his appeal via mail with a postmark of November 22, 2019. Claimant's appeal was not submitted on or before the appeal deadline. The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion? *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that claimant received the decision after the appeal deadline and, therefore, did not have a reasonable opportunity to file a timely appeal. Claimant's appeal was timely.

For the reasons that follow, the administrative law judge concludes IWD did correctly 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.

Recovery of overpayment of benefits. 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 division of job service 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 division a sum equal to the overpayment.

The administrative law judge is persuaded the claimant knew or should have known he must report all wages earned each week that he sought to claim unemployment insurance benefits, and that failure to properly do so, could result in an overpayment, which he must repay. However, the claimant incorrectly reported his wages on several occasions for the period of December 30, 2017 through June 1, 2019. For five of those weeks, claimant reported no wages when he had worked and earned wages. For three of those weeks, claimant significantly under reported the wages that he earned. Claimant's misrepresentations allowed the claimant to collect both wages and unemployment insurance benefits each week. As a result, the claimant

was overpaid benefits in the amount of \$1,684.00, to which he was not entitled. 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) provides, 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, 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.
  - 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 claimant knowingly omitted material information to IWD when he failed to correctly report his wages earned when he filed for unemployment insurance benefits. On five separate occasions, claimant reported he earned \$0.00 in wages but in fact performed work. This was blatantly false. 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 he failed to correctly report wages earned for the period of December 30, 2017 through June 1, 2019 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:**

Claimant's appeal was timely. The November 8, 2019 (reference 03) unemployment insurance decision is affirmed. The claimant was overpaid benefits. IWD correctly imposed the administrative penalty due to the claimant's misrepresentation.

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Adrienne C. Williamson  
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Decision Dated and Mailed

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