

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JENNIFER V ZAICHENKO**  
Claimant

**APPEAL 18A-UI-00916-JC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 08/09/15**  
**Claimant: Appellant (1)**

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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, Jennifer V. Zaichenko, filed an appeal from the January 10, 2018, (reference 04) Iowa Workforce Development (“IWD”) unemployment insurance decision which concluded the claimant was overpaid unemployment insurance benefits because the claimant incorrectly reported, or failed to report, earnings from Iowa Department of Corrections between December 13, 2015 and July 30, 2016. IWD also imposed a 15% administrative penalty due to misrepresentation.

The parties were properly notified of the hearing. A telephone hearing was held on February 15, 2018 with Administrative Law Judge, Jennifer L. Beckman. The claimant, Jennifer V. Zaichenko, participated personally. Kasandra Ellenwood, Investigator II, participated on behalf of IWD. IWD Exhibits A through E 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.

**ISSUES:**

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

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed a claim for unemployment insurance benefits with an effective date of August 9, 2015. The claim was established in response to her permanent separation from Compassion Counseling Inc. While working for Compassion Counseling Inc., the claimant also worked part-time for the Iowa Department of Corrections. The claimant’s employment with Iowa Department of Corrections continued after her separation with Compassion Counseling Inc.

When the claim was filed, the claimant was given the option of reading the Unemployment Insurance Handbook online or a mailed hardcopy. When she filed her claim, the claimant agreed that she would read and understand the handbook. The claimant stated she had never filed for unemployment insurance benefits before, but did not read through the handbook.

With respect to "Reporting Earnings," the 2015 Claimant Handbook stated:

Gross earnings/wages (before tax and payroll deductions) 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 over their WBA, they will not receive a benefit payment

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
- 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

IWD conducted an audit and discovered that the claimant received wages from Iowa Department of Corrections where she worked as a psychiatric physician's assistant during the time period of December 13, 2015 through July 30, 2016, but failed to report the wages. IWD contacted the employer, Iowa Department of Corrections, through employer's representative, Lynn Knight, to verify the claimant's wages earned with the employer (Department Exhibit C5, C6).

As a result of the employer's verification of wages, Ms. Ellenwood also contacted the claimant. Each week, from December 13, 2015, through July 30, 2016, except one week, when the claimant made her weekly continued claims, she reported she earned \$0 in wages, (Department Exhibit E, E1), even though she was performing work each week through Iowa Department of Corrections. During the week ending February 20, 2016, the claimant did report she earned \$420.00 in wages (the employer reported \$723.00). The claimant had no explanation for why on that week only she reported some wages received from Iowa Department of Corrections (even though they were underreported) but did not report wages for any other week.

The claimant was mailed a notice to report on December 18, 2017, which stated she may have been overpaid benefits in the amount of \$9,913.00, for failing to report her wages (Department Exhibit C). The letter also informed her that an overpayment may result, and there may be additional consequences including a 15% penalty (Department Exhibit C). A telephone interview was scheduled for January 2, 2018 at 9:15 a.m. The claimant was unavailable when called. Ms. Ellenwood left a voicemail for the claimant. Ms. Ellenwood did not retrieve her mail containing the notice or respond to the voicemail until January 16, 2018, because she was in Michigan.

The claimant then contacted Ms. Ellenwood on January 16, 2018 in response to opening her mail and seeing the past scheduled telephone interview. The claimant disputed the overpayment amount. The claimant stated she did not report the wages because she did not think she had to report wages from employment that began before her termination date with Compassion Counseling Inc. and was only expected to report wages through new or additional employers that began after her separation. The claimant stated she did not understand why her employment with Department of Corrections was relevant since her claim for unemployment insurance benefits was in response to her discharge from employer, Compassion Counseling Inc.

The claimant's weekly benefit amount was \$431.00 (Department Exhibit C3). Because the claimant did not report her wages during this same period, an overpayment of \$9,913.00 was determined by IWD (Department Exhibit C3) based upon the claimant's non-reporting of wages. The agency established the overpayment based upon the following incorrect payments made to the claimant: (Department Exhibit C3)

WEEK ENDING	WAGES REPORTED	WAGES EARNED	BENEFITS PAID	OVERPAYMENT
12/12/15	\$0	\$0	\$431.00	X
12/19/15	\$0	\$1542.00	\$431.00	\$431.00
12/26/15	\$0	\$0	\$431.00	X
01/02/16	\$0	\$759.00	\$431.00	\$431.00
02/20/16	\$420.00	\$723.00	\$118.00	\$118.00
02/27/16	\$0	\$805.00	\$431.00	\$431.00
03/05/16	\$0	\$677.00	\$431.00	\$431.00
03/12/16	\$0	\$805.00	\$431.00	\$431.00
03/19/16	\$0	\$710.00	\$431.00	\$431.00
03/26/16	\$0	\$771.00	\$431.00	\$431.00
04/02/16	\$0	\$703.00	\$431.00	\$431.00
04/09/16	\$0	\$733.00	\$431.00	\$431.00
04/16/16	\$0	\$697.00	\$431.00	\$431.00
04/30/16	\$0	\$761.00	\$431.00	\$431.00
05/07/16	\$0	\$1853.00	\$431.00	\$431.00
05/14/16	\$0	\$703.00	\$431.00	\$431.00
05/21/16	\$0	\$622.00	\$431.00	\$431.00
05/28/16	\$0	\$471.00	\$431.00	\$431.00
06/04/16	\$0	\$674.00	\$431.00	\$431.00
06/11/16	\$0	\$532.00	\$431.00	\$431.00
06/18/16	\$0	\$0	\$431.00	X
06/25/16	\$0	\$751.00	\$431.00	\$431.00
07/02/16	\$0	\$613.00	\$431.00	\$431.00
07/09/16	\$0	\$684.00	\$431.00	\$431.00
07/16/16	\$0	\$681.00	\$431.00	\$431.00
07/23/16	\$0	\$661.00	\$431.00	\$431.00
07/30/16	\$0	\$703.00	\$313.00	\$313.00
			<b>SUBTOTAL</b>	\$9,913.00
			<b>15% PENALTY</b>	\$1,486.95
			<b>NET OVERPAYMENT</b>	\$11,399.95

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. On 23 occasions, the claimant responded to her weekly continued claim that she had not performed any work and that she did not earn any wages, even though she did. For one week, (February 20, 2016), the claimant stated she earned \$420.00 in wages when she actually

earned \$723.00. The claimant does dispute the overpayment amount and argued that a penalty should not be imposed because she did not understand that she had to report her wages she was earning each week at Department of Corrections.

**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 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.

In this case, the claimant filed a weekly continued claim for 24 weeks between December 13, 2015 and July 30, 2016, and for 23 weeks did not report that she was earning wages from the Department of Corrections each week when prompted. The claimant stated she had never filed for unemployment insurance benefits, yet chose not to read through the entire claimant handbook. The claimant's explanation that she would only have to report wages for employment that began after separation with Compassion Caring Inc. is not persuasive.

The administrative law judge is persuaded the claimant knew or should have known she must report all wages earned each week that she sought to claim unemployment insurance benefits, and that failure to properly do so, could result in an overpayment, which she must repay. The administrative law judge also cannot ignore that for the one week ending, February 20, 2016, the claimant did report some wages which were earned from Department of Corrections. This is indicative of the claimant knowing she should be reporting her employment from the Department of Corrections in conjunction with her weekly continued claims for unemployment insurance benefits.

However, the claimant reported she did not perform work or earn wages for the period of December 13, 2015 and July 30, 2016, and misrepresented she was unemployed as she filed weekly continued claims for unemployment insurance benefits during the same time (Department Exhibit E, E1). This misrepresentation 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 \$9,913.00, to which she was not entitled (Department Exhibit C3). 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) provide 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 the claimant knowingly omitted material information to IWD when she failed to correctly report her wages earned from Iowa Department of Corrections and also filed for unemployment insurance benefits. On 23 separate occasions, the claimant reported she earned \$0 in wages but in fact performed work (Department Exhibit E, E1). This was blatantly false (Department Exhibit C5, C6). For the week ending February 20, 2016, the claimant reported she earned \$420.00 when she in fact earned \$723.00. This was also a misrepresentation of her wages in order to obtain unemployment insurance benefits for which she was not entitled. The administrative law judge concludes that Ms. Zaichenko's intentional concealment of wages led to her 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 she failed to correctly report wages earned for the period December 13, 2015 and July 30, 2016, 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:**

The January 10, 2018 (reference 04) 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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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

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