

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

ERIN DONAWAY

Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL 22A-UI-16234-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/03/20
Claimant: Appellant (2R)**

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

STATEMENT OF THE CASE:

Erin Donaway, the claimant/appellant, filed an appeal from the Iowa Workforce Development (IWD) August 11, 2022 (reference 05) unemployment insurance (UI) decision that concluded she was ineligible for UI benefits due to an outstanding fraud overpayment balance. The parties were properly notified of the hearing. A telephone hearing was held on September 15, 2022. Appeals 22A-UI-16232-DZ-T, 22A-UI-16233-DZ-T, and 22A-UI-16234-DZ-T were heard together and formed one hearing record. Ms. Donaway participated personally. The department did not participate in the hearing. The employer participated through Brianna Baldwin, human resources specialist. The administrative law judge took official notice of the administrative record. Department's Exhibit 1 and 2 were admitted as evidence.

ISSUE:

Is Ms. Donaway ineligible for benefits due to an outstanding fraud overpayment balance?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Donaway filed a claim for REGULAR UI benefits effective May 3, 2020. During the claim year, IWD conducted audits of Ms. Donaway's claim in December 2020 related to employer Vision Care Clinic PC, and in January 2021 related to employer Transitional Services of Iowa. As a result, IWD issued three different UI decisions.

On February 24, 2022, IWD issued a reference 02 UI decision that concluded Ms. Donaway was overpaid REGULAR (state) UI benefits in the gross amount of \$438.00 for 3 weeks between December 6, 2020 and December 26, 2020 because Ms. Donaway incorrectly reported wages earned with employer Vision Care Clinic PC. IWD did not conclude that this overpayment was due to fraud and did not assess any administrative penalty on this overpayment. Ms. Donaway did not appeal that decision and it became final. On May 23, 2022, Ms. Donaway signed an "Agreement to Reimburse Overpayment of Unemployment Insurance Benefits" to repay the \$438.00 overpayment.

On August 4, 2022, IWD issued a reference 04 UI decision that concluded Ms. Donaway was overpaid Federal Pandemic Unemployment Compensation (FPUC) benefits in the gross amount of \$1,800.00 for three weeks between July 5, 2020 and July 25, 2020, and overpaid Lost Wage Assistance Payments (LWAP) in the gross amount of \$600.00 for two weeks between July 26, 2020 and August 8, 2020 because Ms. Donaway misreported wages earned with employer Transitional Services of Iowa. IWD did not conclude that this overpayment was due to fraud and did not assess any administrative penalty on this overpayment. Ms. Donaway appealed that decision. The administrative law judge's decision in Appeal 22A-UI-16233-DZ-T affirmed 03 reference 04 UI decision.

On August 5, 2022, IWD issued a reference 03 UI decision that concluded Ms. Dunaway was overpaid REGULAR (state) UI benefits in the net amount of \$1,075.00 due to a \$1,246.00 overpayment and a \$171.00 underpayment because she incorrectly reported wages earned with employer Transitional Services of Iowa between July 5, 2020 and August 15, 2020. IWD did not conclude that this overpayment was due to fraud and did not assess any administrative penalty on this overpayment. Ms. Donaway appealed that decision. The administrative law judge's decision in Appeal 22A-UI-16232-DZ-T affirmed the reference 03 UI decision.

The administrative record does not show that Ms. Donaway owes IWD any other overpayment. As of September 15, 2022, the IWD Great Plains systems shows Ms. Donaway's overpayment balance as \$4,230.00, calculated as:

- \$38.00 REGULAR (state) UI overpayment (from a \$438.00 overpayment for which Ms. Donaway has repaid \$400.00), plus
- \$1,246.00 REGULAR (state) UI overpayment (the overpayment appealed in this matter), plus
- \$1,800.00 Federal Pandemic Unemployment Compensation (FPUC) overpayment, plus
- \$600.00 Lost Wage Assistance Payments (LWAP) overpayment, plus
- \$186.90 for a 15 percent administrative penalty assessed on a \$1,246.00 REGULAR (state) UI overpayment ($\$1,246.00 \times 0.15$), plus
- \$270.00 for a 15 percent administrative penalty assessed on the FPUC overpayment ($\$270.00 \times 0.15$), plus
- \$90.00 for a 15 percent administrative penalty assessed on the LWAP overpayment ($\$600.00 \times 0.15$).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that Ms. Donaway does not owe IWD any fraud 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.

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.

IWD has never established that Ms. Donaway owes it any overpayment due to fraud. Ms. Donaway does not owe IWD any overpayment due to fraud. The disqualification based on an unpaid fraud overpayment balance should be reversed.

Due process requires notice, an opportunity to be heard, and an impartial tribunal. IWD did not afford Ms. Donaway due process regarding the fifteen percent administrative penalty IWD assessed to Ms. Donaway's REGULAR (state) UI overpayment, FPUC overpayment or LWAP overpayment. Neither the February 24, 2022 (reference 02) UI decision, the August 5, 2022 (reference 03) UI decision, nor the August 4, 2022 (reference 04) UI decision assessed any administrative penalty. Yet, IWD assessed a 15 percent penalty on each of those overpayments and did so on a \$1,246.00 REGULAR (state) UI overpayment even though the reference 03 UI decision lists the net overpayment amount as \$1,075.00.

DECISION:

The August 11, 2022 (reference 05) unemployment insurance decision is REVERSED. IWD never concluded that Ms. Donaway was overpaid due to fraud, and she does not have any unpaid fraud overpayment balance. This disqualification is removed, and benefits are allowed, provided Ms. Donaway is otherwise eligible.

REMAND:

This matter is REMANDED (sent back) to the IWD Benefits Bureau and/or IWD Tax Bureau for review and correction of Ms. Donaway's REGULAR (state) UI overpayment balance.

This matter is further REMANDED to the IWD Benefits Bureau and/or IWD Tax Bureau for removal of the \$186.90, \$270.00, and \$90.00 administrative penalties IWD assessed to Ms. Donaway's REGUALR (sate) UI overpayment, FPUC overpayment, and LWAP overpayment, respectively.



Daniel Zeno
Administrative Law Judge

October 7, 2022
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with this decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to **file a petition for judicial review in District Court** within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de **presentar una petición de revisión judicial en el Tribunal de Distrito** dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.