

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

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**AYRIN J. ALEXANDER**  
Claimant

**APPEAL 22A-UI-18558-CS-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 03/29/20  
Claimant: Appellant (4R)**

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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 & 9 – Misrepresentation & Fraud  
Iowa Code § 96.5(8)-Administrative Penalty

**STATEMENT OF THE CASE:**

On November 3, 2022, the claimant/appellant filed an appeal from the October 27, 2022 (reference 02) Iowa Workforce Development (“IWD”) unemployment insurance decision that found claimant was overpaid regular unemployment insurance benefits funded by the State of Iowa in the amount of \$2,828 for the weeks between April 4, 2020 and December 5, 2020, because claimant failed to report wages earned with Walmart Inc. and City of Ames. IWD imposed a 15% administrative penalty due to misrepresentation. The parties were properly notified of the hearing. A telephone hearing was held on November 30, 2022. The claimant participated personally. Kara Harrison participated on behalf of IWD. This hearing was consolidated with Appeals 22A-UI-18559-CS-T; 22A-UI-18560-CS-T; 22A-UI-18561-CS-T; and 22A-UI-18562-CS-T. IWD Exhibits A1, A2, A3, A4, A5, A6, A7, B1, B2, C1, C2, C3, C4, C5, C6, C7, C8, C9, and C10 were admitted. The administrative law judge took official notice of the claimant’s unemployment insurance benefits records.

**ISSUES:**

- I. Did IWD correctly determine that claimant was overpaid regular unemployment insurance benefits and was the overpayment amount correctly calculated?
- II. Did IWD properly impose a penalty based upon 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 March 29, 2020. Her weekly benefit amount was \$278.00 based upon the wages reported in her base period.

Claimant filed weekly-continued claims beginning March 29, 2020. Claimant admits she filed for benefits through April 25, 2020 and denies filing for any additional weeks after that week. Claimant initially filed for benefits due to Walmart, Inc.’s COVID policy that prohibited employees from working if they showed a broad array of symptoms. Claimant was sent home from time to time because she was had one of the symptoms the employer prohibited employees from having

in order to work. As a result, claimant filed for benefits to supplement the time(s) she was sent home. Claimant stopped working for Walmart Inc. on or about August 6, 2020. (Exhibit A3-1). Claimant began working for The City of Ames on or about July 12, 2020. (Exhibit A3-2). Claimant is a full-time college student and it is unclear whether claimant was a full-time college student at the time she filed for benefits. (See Appeal).

Claimant's administrative record shows continuing weekly claims were filed on her behalf through April 25, 2021. Each weekly payment was deposited into the same bank account during the entire claim period. Additionally, each weekly claim was manually entered and no one but claimant had access to her unemployment login information.

Claimant filed weekly-continued claims beginning March 29, 2020 and consecutively each week thereafter during her benefit year. Claimant received regular unemployment insurance benefits funded by the State of Iowa in the amount of \$7,228.00 from March 29, 2020 through December 5, 2020, when she reached her maximum benefit amount.

Claimant was then paid Pandemic Emergency Unemployment Compensation (PEUC) benefits in the amount of \$4,448.00 beginning December 6, 2020 through March 27, 2021. Claimant was paid Federal Pandemic Unemployment Compensation (FPUC) benefits as a supplement to her regular unemployment insurance benefits and her PEUC benefits. These benefits were paid in the weekly amount of \$600.00 for the weeks between April 26, 2020 and July 25, 2020 and then \$300.00 per week for the weeks between December 27, 2020 and March 27, 2021. Claimant was paid Lost Wages Assistance (LWA) benefits beginning July 26, 2020, through September 5, 2020, as a supplement to her regular unemployment insurance benefits.

IWD conducted an audit and discovered claimant was working for Walmart, Inc. and The City of Ames during the weeks in which she filed her weekly-continued claims for benefits. (Exhibits A3-1 and A3-2). IWD sent Walmart, Inc. and The City of Ames a request of wage records for claimant. The employers responded to the request of wage records. (See Exhibits A3-1, A2-2). During the audit Iowa Workforce Development concluded there was a wage discrepancy for the following weeks. (Exhibit C2-1-2).

For the week ending April 11, 2020, claimant reported earning weekly wages of \$214.00. (KCCO). Claimant received \$133.00 in state unemployment benefits. (DBRO). Wage records from Walmart establish claimant received \$1,269.10 in wages and specialty pay. See Exhibit A3-1.

For the week ending April 25, 2020, claimant reported earning weekly wages of \$267.00. (KCCO). Claimant received \$80.00 in state unemployment benefits. (DBRO). Wage records from Walmart establish claimant received \$475.90 in wages and specialty pay. See Exhibit A3-1.

For the week ending July 18, 2020, claimant reported earning weekly wages of \$0.00. (KCCO). Claimant received \$278.00 in state unemployment benefits. (DBRO). Wage records from Walmart establish claimant received \$742.86 in specialty pay from Walmart, \$242.70 in wages from the City of Ames, and \$150.00 in bonus pay. See Exhibit A3-1 and A3-2.

For the week ending July 25, 2020, claimant reported earning weekly wages of \$0.00. (KCCO). Claimant received \$278.00 in state unemployment benefits. (DBRO). Wage records from The City of Ames establish claimant received \$277.37 in wages. See Exhibit A3-2.

For the week ending August 15, 2020, claimant reported earning weekly wages of \$334.00. (KCCO). Claimant received \$0.00 in state unemployment benefits. (DBRO). Wage records from The City of Ames establish claimant received \$80.90 in wages. See Exhibit A3-2.

For the week ending August 22, 2020, claimant reported earning weekly wages of \$0.00. (KCCO). Claimant received \$278.00 in state unemployment benefits. (DBRO). Wage records from The City of Ames establish claimant received \$105.66 in wages. See Exhibit A3-2.

For the week ending August 29, 2020, claimant reported earning weekly wages of \$0.00. (KCCO). Claimant received \$278.00 in state unemployment benefits. (DBRO). Wage records from The City of Ames establish claimant received \$236.09 in wages. See Exhibit A3-2.

For the week ending September 5, 2020, claimant reported earning weekly wages of \$0.00. (KCCO). Claimant received \$278.00 in state unemployment benefits. (DBRO). Wage records from The City of Ames establish claimant received \$307.09 in wages. See Exhibit A3-2.

For the week ending September 12, 2020, claimant reported earning weekly wages of \$0.00. (KCCO). Claimant received \$278.00 in state unemployment benefits. (DBRO). Wage records from The City of Ames establish claimant received \$262.51 in wages. See Exhibit A3-2.

For the week ending September 19, 2020, claimant reported earning weekly wages of \$352.00. (KCCO). Claimant received \$0.00 in state unemployment benefits. (DBRO). Wage records from The City of Ames establish claimant received \$242.70 in wages. See Exhibit A3-2.

For the week ending September 26, 2020, claimant reported earning weekly wages of \$0.00. (KCCO). Claimant received \$278.00 in state unemployment benefits. (DBRO). Wage records from The City of Ames establish claimant received \$163.45 in wages. See Exhibit A3-2.

For the week ending October 10, 2020, claimant reported earning weekly wages of \$0.00. (KCCO). Claimant received \$278.00 in state unemployment benefits. (DBRO). Wage records from The City of Ames establish claimant received \$292.23 in wages. See Exhibit A3-2.

For the week ending October 24, 2020, claimant reported earning weekly wages of \$0.00. (KCCO). Claimant received \$278.00 in state unemployment benefits. (DBRO). Wage records from The City of Ames establish claimant received \$297.18 in wages. See Exhibit A3-3.

For the week ending October 31, 2020, claimant reported earning weekly wages of \$0.00. (KCCO). Claimant received \$278.00 in state unemployment benefits. (DBRO). Wage records from The City of Ames establish claimant received \$188.21 in wages. See Exhibit A3-3.

For the week ending November 7, 2020, claimant reported earning weekly wages of \$0.00. (KCCO). Claimant received \$278.00 in state unemployment benefits. (DBRO). Wage records from The City of Ames establish claimant received \$141.28 in wages. See Exhibit A3-3.

For the week ending November 14, 2020, claimant reported earning weekly wages of \$0.00. (KCCO). Claimant received \$278.00 in state unemployment benefits. (DBRO). Wage records from The City of Ames establish claimant received \$307.09 in wages. See Exhibit A3-3.

For the week ending November 21, 2020, claimant reported earning weekly wages of \$0.00. (KCCO). Claimant received \$278.00 in state unemployment benefits. (DBRO). Wage records from The City of Ames establish claimant received \$310.39 in wages. See Exhibit A3-3.

For the week ending November 28, 2020, claimant reported earning weekly wages of \$0.00. (KCCO). Claimant received \$278.00 in state unemployment benefits. (DBRO). Wage records from The City of Ames establish claimant received \$196.47 in wages. See Exhibit A3-3.

For the week ending December 5, 2020, claimant reported earning weekly wages of \$0.00. (KCCO). Claimant received \$91.00 in state unemployment benefits. (DBRO). Wage records from The City of Ames establish claimant received \$215.57 in wages. See Exhibit A3-3.

Because the claimant did not report her wages IWD found claimant was an overpaid \$2,828.00 from April 5, 2020, through December 5, 2020. (Exhibit C1). The agency established the overpayment based upon the following incorrect state unemployment payments made to the claimant during the March 29, 2020 claim year due to claimant incorrectly reporting her wages: (Exhibit C2-1)

WEEK ENDING	WAGES REPORTED	WAGES EARNED	BENEFITS PAID	BENEFITS ENTITLED	OVERPAYMENT
4/11/20	\$214.00	\$1,269.00	\$133.00	\$0.00	\$133.00
4/25/20	\$267.00	\$475.00	\$80.00	\$0.00	\$80.00
7/18/20	\$0.00	\$242.00	\$278.00	\$105.00	\$173.00
7/25/20	\$0.00	\$277.00	\$278.00	\$70.00	\$208.00
8/15/20	\$334.00	\$80.00	\$0.00	\$267.00	
8/22/20	\$0.00	\$105.00	\$278.00	\$242.00	\$36.00
8/29/20	\$0.00	\$236.00	\$278.00	\$111.00	\$167.00
9/05/20	\$0.00	\$307.00	\$278.00	0.00	\$278.00
9/12/20	\$0.00	\$262.00	\$278.00	\$85.00	\$193.00
9/19/20	\$352.00	\$242.00	\$0.00	\$105.00	
9/26/20	\$0.00	\$163.00	\$278.00	\$184.00	\$94.00
10/10/20	\$0.00	\$292.00	\$278.00	\$55.00	\$223.00
10/24/20	\$0.00	\$297.00	\$278.00	\$0.00	\$278.00
10/31/20	\$0.00	\$188.00	\$278.00	\$159.00	\$119.00
11/07/20	\$0.00	\$141.00	\$278.00	\$206.00	\$72.00
11/14/20	\$0.00	\$307.00	\$278.00	\$0.00	\$278.00
11/21/20	\$0.00	\$310.00	\$278.00	\$0.00	\$278.00
11/28/20	\$0.00	\$196.00	\$278.00	\$151.00	\$127.00
12/05/20	\$0.00	\$215.00	\$91.00	\$0.00	\$91.00
			<b>SUBTOTAL</b>		<b>\$2,828.00</b>

In addition to the overpayment, a 15% penalty was imposed to the overpayment. IWD sent claimant a notice they had audited her unemployment claim and requested a response from her by October 25, 2022. (Exhibit A4). Claimant did not receive the notice because it was sent to the wrong address. As a result claimant did not respond to the notice. IWD imposed the administrative penalty due to claimant not responding and due to failing to report wages when she had earned wages from her employer.

The online handbook for claimants provides that “you must report all gross wages and all gross earnings on the weekly claim.” See Exhibit B1-5. It further states that “wages are reported when earned, not when paid.” See Exhibit B1-5. Claimant testified she read the Claimant Handbook when she filed her initial application for unemployment insurance benefits.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was overpaid state unemployment benefits during the March 29, 2020 claim year:

Iowa Code section 96.19(38) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

Iowa Admin. Code r. 871-24.18 provides:

Wage-earnings limitation. An individual who is partially unemployed may earn weekly a sum equal to the individual's weekly benefit amount plus \$15 before being disqualified for excessive earnings. If such individual earns less than the individual's weekly benefit amount plus \$15, the formula for wage deductions shall be a sum equal to the individual's weekly benefit amount less that part of wages, payable to the individual with respect to that week and rounded to the lower multiple of one dollar, in excess of one-fourth of the individual's weekly benefit amount.

This rule is intended to implement Iowa Code § 96.3, 96.4 and 96.19 (38).

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 decision in this case rests, at least in part, on the credibility of the witnesses. 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.*

After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the claimant's testimony that she did not file for benefits after April 25, 2020 to not be credible. When a claimant files for benefits they have to log into the system using a username and password each time. In the alternative, a claimant can use a four-digit personal identification number (PIN) to log into the system to file for benefits. After a claimant logs in they have to answer multiple questions and the answers to the questions are manually inputted. A claimant must do this each week in order to file a continuing weekly claim. In this case claimant elected to use a four-digit PIN to log into her account with IWD. There is no evidence that someone else filed these benefits on claimant's behalf. Claimant testified she did not share this information with anyone else. Additionally, when claimant filed her weekly claims she reported her wages at various times through the claim period. (KCCO). This continued past the April 25, 2020 week she claims she stopped filing for benefits. Filing her weekly wages does not fit with the theory someone was filing on her behalf or that there was a mistake with the system.

Lastly, claimant received all of the state and federal unemployment benefits at the same bank and deposited into the same bank account during the entire time she filed for benefits. Claimant's testimony she did not check her bank statements to verify she received the benefits is not credible. Claimant received the benefit of the unemployment money paid on her behalf. As a result Claimant is responsible for any overpayment that may result from the payment of the benefits.

Under Iowa law a claimant is considered partially unemployed in any week when employed in their regular job the individual works less than their regular full-time week and earns less than the individual's weekly benefit amount plus fifteen dollars. See Iowa Code § 96.19(38)(b)(1). When a claimant is partially employed and filing for unemployment benefits a claimant cannot earn wages, bonus pay, holiday pay, and or vacation pay that is more than their weekly benefit amount plus \$15.00. See Iowa Admin. Code r. 871-24.18.

Claimant earned weekly gross wages and special pay above her weekly-benefit amount, plus \$15.00, for the weeks ending: April 11, 2020, April 25, 2020, July 18, 2020, September 5, 2020, October 24, 2020, November 14, 2020, and November 21, 2020. These earnings were reportable for the purposes of deductibility from unemployment insurance benefits. As a result, claimant is overpaid each of these weeks. Claimant received a gross total of \$1,603.00 in state unemployment benefits during these seven weeks.

For the week ending July 25, 2020, claimant earned \$277.37 in wages. As a result, claimant was only entitled to a partial benefit payment of \$70.00, according to the following calculation:

$$\begin{aligned} \$277.00 \text{ (wages)} - \$69.00 \text{ (25\% of WBA)} &= \$208.00 \text{ (wage deduction)} \\ \$278.00 \text{ (WBA)} - \$208.00 \text{ (wage deduction)} &= \$70.00 \text{ (partial weekly benefit amount)} \end{aligned}$$

Claimant received the full weekly benefit amount of \$278.00 for the week. Since claimant was only entitled to receive \$70.00 in state unemployment benefits she has been overpaid \$208.00 for the week ending July 25, 2020.

For the week ending August 15, 2020, claimant earned \$80.90 in wages. As a result, claimant was entitled to a partial benefit payment of \$267.00, according to the following calculation:

$$\begin{aligned} \$80.00 \text{ (wages)} - \$69.00 \text{ (25\% of WBA)} &= \$11.00 \text{ (wage deduction)} \\ \$278.00 \text{ (WBA)} - \$11.00 \text{ (wage deduction)} &= \$267.00 \text{ (partial weekly benefit amount)} \end{aligned}$$

Claimant was underpaid \$267.00 in state unemployment benefits for the week ending August 15, 2020.

For the week ending August 22, 2020, claimant earned \$105.66 in wages. As a result, claimant was only entitled to a partial benefit payment of \$242.00, according to the following calculation:

$$\begin{aligned} & \$105.00 \text{ (wages)} - \$69.00 \text{ (25\% of WBA)} = \$36.00 \text{ (wage deduction)} \\ & \$278.00 \text{ (WBA)} - \$36.00 \text{ (wage deduction)} = \$242.00 \text{ (partial weekly benefit amount)} \end{aligned}$$

Claimant received the full weekly benefit amount of \$278.00 for the week. Since claimant was only entitled to receive \$242.00 in state unemployment benefits she has been overpaid \$36.00 for the week ending August 22, 2020.

For the week ending August 29, 2020, claimant earned \$236.09 in wages. As a result, claimant was only entitled to a partial benefit payment of \$111.00, according to the following calculation:

$$\begin{aligned} & \$236.00 \text{ (wages)} - \$69.00 \text{ (25\% of WBA)} = \$167.00 \text{ (wage deduction)} \\ & \$278.00 \text{ (WBA)} - \$167.00 \text{ (wage deduction)} = \$111.00 \text{ (partial weekly benefit amount)} \end{aligned}$$

Claimant received the full weekly benefit amount of \$278.00 for the week. Since claimant was only entitled to receive \$111.00 in state unemployment benefits she has been overpaid \$167.00 for the week ending August 29, 2020.

For the week ending September 12, 2020, claimant earned \$262.51 in wages. As a result, claimant was only entitled to a partial benefit payment of \$85.00, according to the following calculation:

$$\begin{aligned} & \$262.00 \text{ (wages)} - \$69.00 \text{ (25\% of WBA)} = \$193.00 \text{ (wage deduction)} \\ & \$278.00 \text{ (WBA)} - \$193.00 \text{ (wage deduction)} = \$85.00 \text{ (partial weekly benefit amount)} \end{aligned}$$

Claimant received the full weekly benefit amount of \$278.00 for the week. Since claimant was only entitled to receive \$85.00 in state unemployment benefits she has been overpaid \$193.00 for the week ending September 12, 2020.

For the week ending September 19, 2020, claimant earned \$242.70 in wages. As a result, claimant was entitled to a partial benefit payment of \$105.00, according to the following calculation:

$$\begin{aligned} & \$242.00 \text{ (wages)} - \$69.00 \text{ (25\% of WBA)} = \$173.00 \text{ (wage deduction)} \\ & \$278.00 \text{ (WBA)} - \$173.00 \text{ (wage deduction)} = \$105.00 \text{ (partial weekly benefit amount)} \end{aligned}$$

Claimant was underpaid \$105.00 in state unemployment benefits for the week ending September 19, 2020.

For the week ending September 26, 2020, claimant earned \$163.45 in wages. As a result, claimant was only entitled to a partial benefit payment of \$184.00, according to the following calculation:

$$\begin{aligned} & \$163.00 \text{ (wages)} - \$69.00 \text{ (25\% of WBA)} = \$94.00 \text{ (wage deduction)} \\ & \$278.00 \text{ (WBA)} - \$94.00 \text{ (wage deduction)} = \$184.00 \text{ (partial weekly benefit amount)} \end{aligned}$$

Claimant received the full weekly benefit amount of \$278.00 for the week. Since claimant was only entitled to receive \$184.00 in state unemployment benefits she has been overpaid \$94.00 for the week ending September 26, 2020.

For the week ending October 10, 2020, claimant earned \$292.23 in wages. As a result, claimant was only entitled to a partial benefit payment of \$55.00, according to the following calculation:

$$\begin{aligned} & \$292.00 \text{ (wages)} - \$69.00 \text{ (25\% of WBA)} = \$223.00 \text{ (wage deduction)} \\ & \$278.00 \text{ (WBA)} - \$223.00 \text{ (wage deduction)} = \$55.00 \text{ (partial weekly benefit amount)} \end{aligned}$$

Claimant received the full weekly benefit amount of \$278.00 for the week. Since claimant was only entitled to receive \$55.00 in state unemployment benefits she has been overpaid \$223.00 for the week ending October 10, 2020.

For the week ending October 31, 2020, claimant earned \$188.21 in wages. As a result, claimant was only entitled to a partial benefit payment of \$159.00, according to the following calculation:

$$\begin{aligned} & \$188.00 \text{ (wages)} - \$69.00 \text{ (25\% of WBA)} = \$119.00 \text{ (wage deduction)} \\ & \$278.00 \text{ (WBA)} - \$119.00 \text{ (wage deduction)} = \$159.00 \text{ (partial weekly benefit amount)} \end{aligned}$$

Claimant received the full weekly benefit amount of \$278.00 for the week. Since claimant was only entitled to receive \$159.00 in state unemployment benefits she has been overpaid \$119.00 for the week ending October 31, 2020.

For the week ending November 7, 2020, claimant earned \$141.28 in wages. As a result, claimant was only entitled to a partial benefit payment of \$206.00, according to the following calculation:

$$\begin{aligned} & \$141.00 \text{ (wages)} - \$69.00 \text{ (25\% of WBA)} = \$72.00 \text{ (wage deduction)} \\ & \$278.00 \text{ (WBA)} - \$127.00 \text{ (wage deduction)} = \$206.00 \text{ (partial weekly benefit amount)} \end{aligned}$$

Claimant received the full weekly benefit amount of \$278.00 for the week. Since claimant was only entitled to receive \$206.00 in state unemployment benefits she has been overpaid \$72.00 for the week ending November 7, 2020.

For the week ending November 28, 2020, claimant earned \$196.47 in wages. As a result, claimant was only entitled to a partial benefit payment of \$151.00, according to the following calculation:

$$\begin{aligned} & \$196.00 \text{ (wages)} - \$69.00 \text{ (25\% of WBA)} = \$127.00 \text{ (wage deduction)} \\ & \$278.00 \text{ (WBA)} - \$127.00 \text{ (wage deduction)} = \$151.00 \text{ (partial weekly benefit amount)} \end{aligned}$$

Claimant received the full weekly benefit amount of \$278.00 for the week. Since claimant was only entitled to receive \$151.00 in state unemployment benefits she has been overpaid \$127.00 for the week ending November 28, 2020.

For the week ending December 5, 2020, claimant earned \$215.57 in wages. As a result, claimant was only entitled to a partial benefit payment of \$132.00, according to the following calculation:

$$\begin{aligned} & \$215.00 \text{ (wages)} - \$69.00 \text{ (25\% of WBA)} = \$146.00 \text{ (wage deduction)} \\ & \$278.00 \text{ (WBA)} - \$146.00 \text{ (wage deduction)} = \$132.00 \text{ (partial weekly benefit amount)} \end{aligned}$$



Claimant was entitled \$132.00 for the week ending November 28, 2020. Claimant received a partial payment of \$91.00 for the week. As a result claimant was underpaid \$41.00 for the week.

In total claimant was overpaid a gross total of \$2,842.00 in state unemployment benefits. Claimant was also underpaid a gross total of \$413.00 in state unemployment benefits. The administrative law judge concludes the claimant's was overpaid a net total of \$2,429.00 in state unemployment benefits for the period of April 5, 2020, through December 5, 2020.

The next issue is whether the imposition of a 15% penalty due to 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(1) provides:

Penalties. An individual who makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, to obtain or increase any benefit or other payment under this chapter, either for the individual or for any other individual, is guilty of a fraudulent practice as defined in sections 714.8 to 714.14.

Iowa Code section 96.16(4)(a) and (b) provide in pertinent 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.

Iowa Admin. Code r. 871- 25.1 provides the following definition of "fraud":

[T]he 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.

Iowa Admin. Code r. 871- 25.1 defines “misrepresentation” as “to give misleading or deceiving information to or omit material information; to present or represent in a manner at odds with the truth.”

Claimant testified she did not file for benefits after April 25, 2020. Prior to this time she acknowledges she filed for benefits and reported her wages each week. Claimant continued to file for benefits and did not report her wages for fifteen different weeks that she filed for benefits. The administrative law judge finds that the claimant knowingly omitted material information by failing to report the earnings from Walmart, Inc. and The City of Ames when she filed her weekly-continued claims for unemployment insurance benefits. This was an intentional concealment of a material fact which led to the payment of benefits. Therefore, the penalty of 15% was properly imposed pursuant to Iowa Code § 96.16(4).

**DECISION:**

The October 27, 2022 (reference 02) unemployment insurance decision is MODIFIED in favor of appellant. The claimant is overpaid regular unemployment insurance benefits in the gross amount of \$2,842.00 in state unemployment benefits. Claimant was also underpaid a gross total of \$413.00 in state unemployment benefits during this claim period. Claimant has been overpaid a net amount of \$2,429.00 for the weeks between April 5, 2022 and December 5, 2022 and is required to repay the agency this overpayment balance. The claimant engaged in misrepresentation and IWD properly imposed the administrative penalty of 15%. The penalty due to misrepresentation must be repaid as well.

Claimant should note the overpayment amount may increase after the issues on remand have been determined.

**REMAND:**

The issue of whether claimant is entitled to unemployment benefits is remanded to the benefits bureau for an initial investigation and determination. The benefits bureau should look at the issues of whether claimant was employed for the same hours and wages, and whether claimant was totally, partially, or temporarily unemployed with employers Walmart Inc. and The City of Ames during this claim year.



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Carly Smith  
Administrative Law Judge

December 7, 2022  
Decision Dated and Mailed

**APPEAL RIGHTS.** If you disagree with the 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  
4<sup>th</sup> 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 adquiera 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.