

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JASEN E MCGEE**  
Claimant

**INVESTIGATIONS & RECOVERY**

**APPEAL 19A-UI-05829-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/03/19**  
**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

**STATEMENT OF THE CASE:**

The claimant/appellant, Jasen E. McGee, filed an appeal from the July 20, 2019 (reference 04) Iowa Workforce Development (“IWD”) unemployment insurance decision which concluded the claimant was overpaid unemployment insurance benefits because he failed to accurately report earnings while concurrently filing weekly claims for unemployment insurance benefits. IWD also imposed a 15% administrative penalty due to misrepresentation.

The parties were properly notified of the hearing. A telephone hearing was held on August 14, 2019. The claimant, Jasen E. McGee, participated personally. Kasandra Ellenwood, Investigator, participated on behalf of IWD. IWD Exhibits A-I 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 most recently filed a claim for unemployment insurance benefits with an effective date of February 3, 2019. He also had a prior claim with an effective date of January 28, 2018 (Department Exhibit C-6).

When the claim was established, the claimant was directed to read the Unemployment Insurance Handbook (Department Exhibit H). The Unemployment Insurance Handbook includes instructions for properly filing claims and informs claimants that failure to follow the instructions could result in a denial or overpayment of benefits. The handbook also informs

claimants that they should call IWD customer service for help if they don't understand the information in the handbook (Department Exhibit G). The claimant did not read the handbook.

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

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 (Department Exhibit G-4).

The handbook also provides in part:

Overpayment

Individuals are responsible for repaying any benefits they were not eligible to receive. Future UI benefit payments are withheld until the overpayment has been recovered in full. If the individual is not making attempts to repay the overpayment, the debt may be recovered by withholding state and federal tax refunds, casino and lottery winnings, and vendor payments. Overpayments caused by fraud include a 15% penalty. (Department Exhibit G-5).

The handbook also alerts claimants 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 (Department Exhibit G-2)

In addition, each week the claimant would complete a weekly continued claim, he would see a screen online which provided:

It is important that you answer all questions truthfully.

**WARNING:** Attempting to claim and receive unemployment insurance benefits by entering false information can result in loss of benefits, fines and imprisonment.

Before completing his weekly continued claim each week, the claimant had to check a box that stated he understood the warning message above and wished to proceed (Department Exhibit I).

**IWD conducted an audit and discovered that the claimant received wages from Weitz Industrial LLC., Ryan Companies US Inc., MA Mortenson Co., and B G Brecke Inc.** During the time period of September 30, 2018 through April 20, 2019, but failed to report all wages. IWD contacted the employers to verify the claimant's wages earned (Department Exhibit C-3, C-7, C-8, C-9, C-10, C-11, C-12, C-13). The claimant performed work for Weitz Industrial LLC., briefly, in October 2018. Then he worked for Ryan Companies US Inc., from November 5, 2018 through December 14, 2018. He then worked for MA Mortenson Co., from January 14, 2019

through February 22, 2019. He was rehired by Weitz Industrial LLC. on March 26, 2019, before working at BG Brecke Inc. for the period of April 15-18, 2019 (Ellenwood testimony).

A review of the administrative file reflects the claimant did not report the same wages as the employer. For three weeks (10/06/18, 10/13/18 and 3/30/19), the claimant reported he earned \$0.00 in wages, when he earned \$1,302.00, \$601.00 and \$250.00 in wages). For several other weeks, the claimant severely underreported his wages, which allowed him to collect some benefits (Department Exhibit C-6).

As a result of the employer's verification of wages, Investigator Ellenwood also contacted the claimant. The claimant was mailed a preliminary audit on June 18, 2019, which stated he may have been overpaid benefits in the amount of \$2,223.00, for failing to report his wages (Department Exhibit C-4). The letter also informed him that an overpayment may result in consequences including a 15% penalty (Department Exhibit C-4).

The claimant contacted Investigator Ellenwood on June 24, 25 and 26, 2019 in response to the letter. The claimant disputed the overpayment amount but did not provide evidence that the wages reported by the employer were inaccurate. He was given additional time to provide contradictory wage information but did not to Investigator Ellenwood or for the hearing. The claimant offered several explanations for calculating his wages, including that he reported net instead of gross, the he reported when they were earned, that he estimated the wages, that he did not keep track of the wages and that it was hard to keep track of what each employer was paying him. He acknowledged having personal expenses related to medical treatment and child support (Department Exhibit E, E-1, E-2, E-3, E-4, E-5).

Because the claimant did not accurately report his wages during this same period, an overpayment of \$\$2,223.00 was determined by IWD (Department Exhibit C-6). The agency established the overpayment based upon the following incorrect payments made to the claimant: (Department Exhibit C-6)

Week Ending	Wages Reported by Claimant	Wages Reported by Weitz Industrial LLC	Wages Reported by Ryan Companies US INC	Wages Reported by MA Mortenson Co.	Wages Reported by B. G. Brecke Co.	UI Benefits Paid	UI Benefits Entitled	Underpayment	Overpayment
10/06/18	0.00	1,302.00				455.00	0.00		OP already set up
10/31/18	0.00	601.00				455.00	0.00		455.00
10/20/18	0.00					455.00	455.00		
10/27/18	665.00					0.00	455.00	455.00	
11/03/18	196.00					372.00	455.00	83.00	
11/10/18	174.00		801.00			394.00	0.00		394.00
11/17/18	687.00		1,039.00			0.00	0.00		
11/24/18	660.00		601.00			0.00	0.00		
12/22/18	0.00		0.00			455.00	455.00		
12/29/18	100.00		0.00			455.00	455.00		
01/05/19	0.00		0.00			455.00	455.00		
01/12/19	0.00					455.00	455.00		
01/19/19	200.00			1,001.00		368.00	0.00		368.00
01/26/19	768.00			839.00		0.00	0.00		

02/09/19	100.00			676.00		467.00	0.00		467.00
03/30/19	0.00	250.00				467.00	333.00		134.00
04/20/19	178.00				817.00	405.00	0.00		405.00
Sub Total								538.00	2,223.00

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. On three occasions, the claimant responded to his weekly continued claim that he had not performed any work and that he did not earn any wages. The claimant does not dispute the overpayment amount but argued that a penalty should not be imposed because he made a mistake.

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

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

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.

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 (Department Exhibit I). However, the claimant reported he did not perform work or severely underreported wages earned when he filed weekly continued claims for unemployment insurance benefits during the same time (Department Exhibit C-6). No evidence was presented that the wages reported by the employer to IWD were inaccurate or incorrect. Consequently, the claimant was able to collect both wages and unemployment insurance benefits each week. As a result, the claimant was overpaid benefits in the amount of \$2,223.00, to which he was not entitled (Department Exhibit C-6). 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, 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.

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

The claimant in this case has made claims for unemployment insurance benefits for several years. It is his responsibility to understand the rules and procedures, and he is reminded of that when he establishes his claim, by way of reading the handbook. The claimant was also warned each week when filing his weekly continued claim that failure to provide accurate information could result in an overpayment or consequences (Department Exhibit I). The administrative law judge carefully reviewed the wages reported by the claimant versus the employer and could not establish a pattern such as reporting one week off, or reporting net instead of gross wages, which would still be inaccurate, but would support an unintentional mistake.

Based on the evidence presented, the administrative law judge concludes the claimant knowingly omitted material information to IWD when he failed to correctly report all wages earned from Weitz Industrial LLC., Ryan Companies US Inc., MA Mortenson Co., and B G Brecke Inc. when he filed for unemployment insurance benefits during the period of September 30, 2018 through April 20, 2019. On three separate occasions, the claimant reported he earned no wages but in fact performed work (Department Exhibit C-6). This was blatantly false. In addition, the claimant repeatedly underreported wages earned which allowed him to collect wages and unemployment insurance benefits. Here, the 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 September 30, 2018 through April 20, 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:**

The July 20, 2019 (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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