

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JASON KELLY
Claimant

APPEAL 20A-UI-01153-B2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 12/08/19
Claimant: Appellant (1)**

Iowa Code § 96.5(13) – Disqualification due to Outstanding Fraud Overpayment

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the January 24, 2020 (reference 02) Iowa Workforce Development (“IWD”) unemployment insurance decision that found claimant was not eligible for unemployment insurance benefits due to an outstanding fraud overpayment balance. The parties were properly notified of the hearing. A telephone hearing was held on February 24, 2020. The claimant, Jason Kelly, participated personally. Elizabeth Volious participated on behalf of IWD. IWD Exhibits 1-15 were admitted. The administrative law judge took official notice of the claimant’s unemployment insurance benefits records.

ISSUE:

Is the claimant ineligible for benefits due to an outstanding fraud overpayment balance?

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 effective dates of December 3, 2017, December 2, 2018, and December 8, 2019. During the most recent claim year, a decision was issued on January 24, 2020 which found that the claimant was overpaid benefits of \$2,917.00, including interest and a 15% penalty due to fraud. This decision was affirmed on appeal in case no. 20A-UI-01151-B2.

To date, claimant has failed to pay the outstanding overpayment amount owed, including interest, penalties, and lien fees. The current outstanding balance owed is \$3,354.55, due to a 15% penalty.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not eligible for benefits until the balance of the benefits received by the claimant due to misrepresentation, including all penalties, interest, and lien fees are paid in full. Benefits are denied at this time.

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.

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.*

Volious' testimony was corroborated by documentation and the evidence presented was consistent. After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using his own common sense and experience, the Administrative Law Judge finds that Volious' testimony is more credible than claimant's testimony.

Claimant currently owes a balance of \$3,354.55 due to a decision issued on January 24, 2020 which found that the claimant failed to report or incorrectly reported wages, resulting in a determination that the claimant engaged in misrepresentation pursuant to Iowa Code § 96.16(4). Because this fraud balance remains unpaid, claimant is not eligible for benefits at this time. See Iowa Code § 96.5(13).

DECISION:

The January 24, 2020 (reference 02) unemployment insurance decision is affirmed. The claimant is not eligible for benefits. Benefits are withheld until the claimant has paid the unpaid fraud overpayment balance, plus penalties, interest, and lien fees, provided claimant is otherwise eligible.

Benefits are withheld until the claimant has paid the overpayment plus 15% fraud penalty. Claimant must additionally meet all other eligibility requirements.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn