

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**VICTOR A CLARK  
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CEDAR RAPIDS IA 52403-2639**

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**APPEAL 20A-UI-02429-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**APPEAL RIGHTS:**

**This Decision Shall Become Final**, unless within fifteen (15) days from the mailing date below the administrative law judge's signature on the last page of the decision, you or any interested party:

Appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
or  
Fax (515)281-7191**

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:**

The name, address and social security number of the claimant.

A reference to the decision from which the appeal is taken.

That an appeal from such decision is being made and such appeal is signed.

The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your 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.

**ONLINE RESOURCES:**

UI law and administrative rules: <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-law-and-administrative-rules>

UI Benefits Handbook: <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-benefits-handbook-guide-unemployment-insurance-benefits>

Handbook for Employers and forms: <https://www.iowaworkforcedevelopment.gov/employerforms>

Employer account access and information: <https://www.myiowauui.org/UITIPTaxWeb/>

National Career Readiness Certificate and Skilled Iowa Initiative: <http://skillediowa.org/>

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**VICTOR A CLARK**  
Claimant

**INVESTIGATIONS & RECOVERY**

**APPEAL 20A-UI-02429-JE-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/29/19**  
**Claimant: Appellant (1-R)**

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 filed an appeal from the March 6, 2020 (reference 01) 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 April 29, 2020. The claimant participated in the hearing. Kasandra Ellenwood, Investigator, participated on behalf of IWD. IWD Exhibits A through K were admitted. The administrative law judge took official notice of the claimant’s unemployment insurance benefits records.

**ISSUES:**

Whether IWD correctly determined the claimant was overpaid unemployment insurance benefits and if the overpayment amount was correctly calculated.  
Whether IWD properly imposed a penalty based upon the claimant’s misrepresentation.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant filed a claim for unemployment insurance benefits with an effective date of September 29, 2019.

When the claim was established, the claimant was directed to read the Unemployment Insurance Handbook (Department Exhibit G). 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).

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).

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).

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)

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 J).

IWD conducted an audit and discovered that the claimant received wages from Kraft Heinz from October 5, 2019 through February 22, 2020, but failed to report the wages. IWD contacted the employer's representative, Equifax, February 28, 2020, to verify the claimant's wages earned with Kraft Heinz. The employer confirmed the claimant performed work for it between October 5, 2019 and February 22, 2020, and is still employed with that employer.

A review of the administrative file reflects the claimant did not report his wages or underreported his wages to the Department. The claimant reported \$0.00 in wages every week between October 5, 2019 and February 22, 2020, with the exception of the following weeks: the week ending October 19, 2019, he reported he earned \$180.00; the week ending November 9, 2019,

he reported he earned \$60.00; the week ending January 25, 2020, he reported he earned \$180.00; and the week ending February 8, 2020, he reported he earned \$200.00; when he filed his weekly continued claim, even though he was performing work.

As a result of the employer's verification of wages, Investigator Kasandra Ellenwood also contacted the claimant. The claimant was mailed a preliminary audit on March 30, 2020, which stated he may have been overpaid benefits in the amount of \$9,729.00, for failing to report his wages (Department Exhibit D). The letter also informed the claimant that an overpayment may result in consequences including a 15% penalty (Department Exhibit D).

Ms. Ellenwood contacted the claimant on March 18, 2020, for a telephone interview. The claimant did not dispute the overpayment amount or provide evidence that the wages reported by the employer were inaccurate. The claimant stated he did not report the wages he earned from Kraft Heinz because he was not "filing against Kraft Heinz."

The claimant's weekly benefit amount was \$481.00. Because the claimant did not accurately report his wages during this same period, an overpayment of \$9,729.00 was determined by IWD (Department Exhibit D).

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 21 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 he should not have to repay the overpayment of benefits and the administrative penalty should not be imposed because he did not intend to file for benefits against Kraft Heinz.

The decision covered the overpayment from October 5, 2019 through February 22, 2020. The claimant also received benefits in the amount of \$481.00 for the one week ending February 29, 2020.

#### **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.

b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the

unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

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 G). However, the claimant reported he did not perform work or earn wages or underreported his wages for the period of October 5, 2019 through February 22, 2020, and misrepresented he was unemployed as he filed weekly continued claims for unemployment insurance benefits during the same time. 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 \$9,729.00, to which he was not entitled. 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

Based on the evidence presented, the administrative law judge concludes the claimant knowingly omitted material information to IWD when he failed to correctly report his wages earned from October 5, 2019 to February 22, 2020, when he filed for unemployment insurance benefits. On 17 separate occasions, the claimant reported he earned \$0.00 in wages but in fact performed work. On four occasions the claimant underreported his wages. This was blatantly false. 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 October 5, 2019 through February 22, 2020, 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.

The issue of whether the claimant is overpaid benefits in the amount of \$481.00 for the one week ending February 29, 2020, plus a 15% administrative penalty is remanded to the Benefits Bureau for an initial determination and adjudication.

**DECISION:**

The March 6, 2020, (reference 01) unemployment insurance decision is affirmed. The claimant was overpaid benefits in the amount of \$9,729.00. IWD correctly imposed the 15% administrative penalty of \$1,495.35 due to the claimant's misrepresentation. The issue of whether the claimant is overpaid benefits in the amount of \$481.00 for the one week ending February 29, 2020, plus a 15% administrative penalty is remanded to the Benefits Bureau for an initial determination and adjudication.



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Julie Elder  
Administrative Law Judge

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May 18, 2020  
Decision Dated and Mailed

je/mh