

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMI L SCHWICKERATH
Claimant

APPEAL 19A-UI-06274-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 07/01/18
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:

On August 9, 2019, the claimant/appellant, Jamie Schwickerath, filed an appeal from the August 5, 2019 (reference 02) unemployment insurance decision which concluded the claimant was overpaid unemployment insurance benefits because she failed to accurately report earnings while concurrently filing weekly claims for unemployment insurance benefits. Iowa Workforce Development (IWD) also imposed a 15% administrative penalty due to misrepresentation.

The parties were properly notified of the hearing. A telephone hearing was held on September 13, 2019. The claimant participated personally and through her husband, Nathan Schwickerath. Sean Clark, Investigator, participated on behalf of IWD. IWD Exhibits 1 through 7 were admitted.

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 filed a claim for unemployment insurance benefits with an effective date of July 1, 2018.

When the claim was established, the claimant agreed to read the Unemployment Insurance Handbook online (Department Exhibit 3). 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 5).

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

Gross earnings or gross wages are your earnings before taxes or other payroll deductions are made. Earnings or wages 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 or more over their WBA, they will not receive a benefit payment (Department Exhibit 5-3).

The handbook also provides in part:

Preparing to File a Weekly Claim

Individuals should have the following information available when filing their weekly claim:

- SSN
- PIN
- Total amount of gross wages (before deductions) earned during the week
- Total amount of gross holiday pay, gross vacation and severance, if applicable

To calculate gross earnings, multiply the number of hour worked (Sunday through Saturday) times the rate of pay. Example: 10 hours X \$12.00/hour = \$120.00 in gross earnings (Department Exhibit 5-5).

In addition, each week the claimant would complete a weekly continued claim, she 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 her weekly continued claim each week, the claimant had to check a box that stated she understood the warning message above and wished to proceed (Department Exhibit 6-1).

When filing a weekly claim, claimant was instructed to enter holiday and vacation pay. (Department Exhibit 6-1). Claimant was also instructed to report wages by entering "the gross amount rounded to the nearest dollar." (Department Exhibit 6-3)

Finally, before submitting her weekly claim filing, claimant was required to review the information entered and answer the following question:

The laws impose penalties for false statements. Do you certify the information you have provided is true for the week ending Saturday, (Department Exhibit 6-4)

Claimant began working for Cresco Insurance Agency on October 15, 2018. When claimant began her employment with Cresco Insurance Agency, she contacted Iowa Workforce Development to ask whether she should continue filing weekly continued claims. Since claimant was only working part-time hours at first, she was directed to continue to file weekly continued claims just as she had before. The Workforce Representative did not instruct claimant to report net wages and claimant did not specifically ask that question.

Initially, claimant reported wages far above the gross amount of wages she earned working for Cresco Insurance Agency on a part-time basis. This resulted in a \$1,040.00 underpayment, which may be released to claimant upon satisfaction of the overpayment in question.

Claimant began working full-time hours for Cresco Insurance Agency effective November 18, 2018. At that point, claimant continued to file weekly claims for unemployment insurance benefits, but began reporting far below her gross weekly earnings. There were many weeks where claimant received vacation or holiday pay, but did not report it on her weekly claim. For the weeks beginning March 23, 2019, through June 29, 2019, claimant reported wages in the amount of \$480.00 per week each week, even though the hours she worked each week varied and she was paid by the hour.

IWD conducted an audit and discovered that claimant received wages from Cresco Insurance Agency between October 14, 2018, and June 29, 2019, but underreported the wages and/or holiday and vacation pay for 20 of those weeks. IWD contacted the employer to verify the claimant's wages earned with employer, Cresco Insurance Agency. The employer confirmed the claimant performed work during the weeks beginning October 14, 2018, through June 29, 2019, and the wages, holiday, and vacation pay claimant received. (Department Exhibit 2-5,2-6).

As a result of the employer's verification of wages, Investigator Sean Clark also contacted the claimant. The claimant was mailed a preliminary audit on July 24, 2019, which stated she may have been overpaid benefits in the amount of \$3,909.00, for failing to accurately report wages (Department Exhibit 2-1). The letter also informed claimant that an overpayment may result in consequences including a 15% penalty (Department Exhibit 2-1).

Claimant contacted Investigator Sean Clark on July 30, 2019, in response to the letter. The claimant did not dispute the overpayment amount or provide evidence that the wages reported by the employer were inaccurate. The claimant stated she did not accurately report the wages because she believed she was required to report net wages because she was having federal and state taxes withheld from her unemployment insurance benefit payments. Claimant also stated that she continued to file weekly continued claims when she began working on a full-time basis because she was earning less than she had in her previous job.

Claimant's weekly benefit amount was \$529.00 (Department Exhibit 2-3). Because the claimant did not accurately report her wages, an overpayment of \$3,909.00 was determined by IWD (Department Exhibit 2-3,2-4). The agency established the overpayment based upon the following incorrect payments made to the claimant: (Department Exhibit 2-3,2-4)

| WEEK ENDING | WAGES REPORTED | WAGES EARNED | BENEFITS PAID | BENEFITS ENTITLED | OVERPAYMENT |
|----------------|-------------------|-----------------|------------------|----------------------|-------------|
| 10/20/18 | 255.00 | 355.00 | 406.00 | 306.00 | 100.00 |
| 11/24/18 | 232.00 | 585.00 | 429.00 | 00 | 429.00 |
| 12/08/18 | 435.00 | 600.00 | 226.00 | 00 | 226.00 |
| 12/15/18 | 450.00 | 596.00 | 211.00 | 00 | 211.00 |
| 01/19/19 | 400.00 | 565.00 | 261.00 | 00 | 261.00 |
| 02/09/19 | 500.00 | 587.00 | 161.00 | 00 | 161.00 |
| 02/16/19 | 485.00 | 593.00 | 176.00 | 00 | 176.00 |
| 02/23/19 | 480.00 | 606.00 | 181.00 | 00 | 181.00 |
| 03/16/19 | 488.00 | 577.00 | 173.00 | 00 | 173.00 |
| 03/23/19 | 480.00 | 578.00 | 181.00 | 00 | 181.00 |
| 03/30/19 | 480.00 | 590.00 | 181.00 | 00 | 181.00 |
| 04/06/19 | 480.00 | 625.00 | 181.00 | 00 | 181.00 |

| | | | | | |
|----------|--------|--------|--------------------|----|----------|
| 04/13/19 | 480.00 | 643.00 | 181.00 | 00 | 181.00 |
| 04/20/19 | 480.00 | 587.00 | 181.00 | 00 | 181.00 |
| 04/27/19 | 480.00 | 593.00 | 181.00 | 00 | 181.00 |
| 05/04/19 | 480.00 | 577.00 | 181.00 | 00 | 181.00 |
| 05/11/19 | 480.00 | 583.00 | 181.00 | 00 | 181.00 |
| 05/18/19 | 480.00 | 590.00 | 181.00 | 00 | 181.00 |
| 06/22/19 | 480.00 | 579.00 | 181.00 | 00 | 181.00 |
| 06/29/19 | 480.00 | 601.00 | 181.00 | 00 | 181.00 |
| | | | SUBTOTAL: | | 3,909.00 |
| | | | 15% Penalty | | 586.35 |
| | | | TOTAL | | 4,495.35 |

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. The claimant does not dispute the overpayment amount but argued that a penalty should not be imposed because she was confused about what was required when reporting wages on her weekly claims.

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.

Here, claimant collected both wages and unemployment insurance benefits during each week specified in the table in the findings of fact above. Claimant inaccurately reported wages, vacation pay, and holiday pay during those weeks. As a result, the claimant was overpaid benefits in the amount of \$3,909.00, to which she was not entitled. The administrative law judge concludes 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 she failed to correctly report wages earned from Cresco Insurance Agency when she filed for unemployment insurance benefits. Although claimant asserts she believed she was required to report net wages on her weekly claims, her weekly reporting does not correspond with what those net wages would be. This is especially evident during the weeks where claimant repeatedly reported \$480.00 as her weekly wage when she was working a varying amount of hours each of those weeks. The fact that when claimant initially became employed with Cresco Insurance Agency she reported far above her weekly wage only bolsters the fact that claimant misrepresented her weekly earnings to Iowa Workforce Development. Each week claimant certified the information she provided was true and that she understood she could be penalized if it was not, even though claimant knew she had made no effort to ascertain whether she was providing factual information. The claimant's repeated and intentional concealment of wages, vacation, and holiday pay led to the claimant receiving an overpayment of unemployment insurance benefits close to \$4,000.00.

The administrative law judge concludes the calculated overpayment was correct, and the claimant knowingly omitted material information to IWD when she failed to correctly report wages earned for 20 weeks between October 14, 2018, and June 29, 2019, and concurrently filed for and received 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 August 5, 2019 (reference 02) unemployment insurance decision is affirmed. The claimant was overpaid benefits. IWD correctly imposed the administrative penalty due to the claimant's misrepresentation.

Christine A. Louis
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Decision Dated and Mailed

cal/scn