

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRAD K GOMEZ
Claimant

APPEAL 20A-UI-02561-B2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 01/05/20
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, Gomez, filed an appeal from the March 20, 2020 (reference 06) 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 24, 2020. The claimant, Gomez, participated personally. No investigator participated on behalf of IWD. The administrative law judge took official notice of the claimant’s unemployment insurance benefits records and Department Exhibits 1-4. Claimant’s Exhibit A was also admitted into evidence. 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 filed claims for unemployment insurance benefits with effective dates between January 28, 2018 and February 1, 2020.

When the claim was established each year, the claimant was directed to read the Unemployment Insurance Handbook. 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

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.

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.

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

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.

IWD conducted an audit and discovered that he received wages from Wise Guys Pizza & More, Sports Fan Pizza, Crow Valley Golf Club and Dynamic Restaurant. During the time period of January 28, 2018 and February 1, 2020, claimant was paid not only a hourly wages, but also wages for each delivery he completed, but claimant failed to report the wages on the pizzas delivered. IWD contacted the Wise Guys Pizza, Crow Valley Golf Club, and Dynamic Restaurant to verify the claimant's wages earned with employers (Department Exhibit 4-5 to 4-9). The employer confirmed the claimant performed work and received additional payment on a per-delivery basis.

A review of the administrative file reflects the claimant did not report the same wages as the employer. From 1-6-18, through 2-1-20, the claimant reported he earned \$3,110.00 less in wages than employers reported.

As a result of the employer's verification of wages, IWD also contacted the claimant. The claimant was mailed a preliminary audit on 3-4-20, which stated he may have been overpaid benefits in the amount of \$3,110.00, for failing to report all wages (Department Exhibit 4-1). The letter also informed him that an overpayment may result in consequences including a 15% penalty.

The claimant stated he did not report the wages because they were not wages. He was paid by various employers for deliveries. These, he argued were just repayments for expenses claimant had with his vehicle.

Because the claimant did not accurately report his wages during these periods, an overpayment of \$3,110.00 was determined by IWD (Department Exhibit 4-2 to 4-4). The agency established the overpayment based upon the following incorrect payments made to the claimant: (Department Exhibit 4-2 to 4-4)

	Wages Reported By		UI Benefits		Underpayment	Overpayment
Week Ending	Claimant	Employer	Amount Paid	Entitled		
02/03/18	280.00	577.00	288.00	0.00		288.00
02/10/18	481.00	396.00	150.00	172.00	22.00	
02/17/18	439.00	550.00	129.00			129.00
02/24/18	437.00	563.00	131.00	0.00		131.00
03/03/18	437.00	486.00	131.00			131.00
03/10/20	418.00	521.00	150.00	0.00		150.00
03/17/18	412.00	463.00	156.00	105.00		51.00
03/24/18	403.00	496.00	165.00	0.00		165.00
03/31/20	412.00	525.00	156.00	0.00		156.00
04/07/18	398.00	475.00	170.00	0.00		170.00
04/14/18	403.00	466.00	165.00	102.00		63.00
04/21/18	403.00	512.00	165.00	0.00		165.00
04/28/18	423.00	536.00	145.00	0.00		145.00
05/05/18	402.00	490.00	166.00	0.00		166.00
05/12/18	426.00	521.00	142.00	0.00		142.00
05/19/18	439.00	654.00	129.00	0.00		129.00
05/26/18	496.00	588.00	0.00	0.00		0.00
01/05/19	145.00	147.00	397.00	287.00		110.00
01/12/19	104.00	88.00	434.00	434.00		
01/19/19	98.00	115.00	434.00	427.00		7.00
01/26/19	109.00	111.00	433.00	431.00		2.00
02/02/19	116.00	87.00	426.00	434.00	8.00	
02/09/19	94.00	111.00	434.00	431.00		3.00

02/16/19	114.00	0.00	428.00	434.00	6.00	
02/23/19	94.00	129.00	434.00	413.00		21.00
03/02/19	116.00	120.00	426.00	422.00		4.00
03/09/19	114.00	123.00	428.00	419.00		9.00
03/16/19	109.00	120.00	433.00	422.00		11.00
03/23/19	114.00	117.00	428.00	425.00		3.00
03/30/19	104.00	113.00	434.00	429.00		5.00
04/06/19	111.00	123.00	431.00	419.00		12.00
04/13/19	114.00	115.00	428.00	427.00		1.00
04/20/20	94.00	93.00	434.00	434.00		0.00
04/27/19	111.00	117.00	431.00	425.00		6.00
05/04/19	118.00	120.00	424.00	422.00		2.00
05/11/19	120.00	123.00	422.00	419.00		3.00
05/18/19	114.00	106.00	428.00	434.00	6.00	
05/25/19	114.00	576.00	428.00	0.00		428.00
01/11/20	223.00	314.00	378.00	287.00		91.00
01/18/20	222.00	293.00	379.00	308.00		71.00
01/25/20	232.00	308.00	369.00	293.00		76.00
02/01/20	223.00	287.00	378.00	314.00		64.00
Total						3,110.00

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. The claimant repeatedly omitted portions of his wages that he attributed to automotive maintenance.

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. However, the claimant reported he did not earn the wages he'd actually received from employer on over 40 occasions when he'd filed weekly claims over a two year period. 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 \$3,110.00, to which he was not entitled. The administrative law judge concludes therefore, that the overpayment was correctly calculated.

Claimant argues that the per-delivery pay is not wages. Iowa Code states that wages are defined as, "labor or services rendered by an employee, whether determined on a time, task, piece, commission or other basis of calculation." Iowa Code section 91A.2(7). Here, claimant received a combination of both hourly wages and wages per task performed. Both are wages.

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

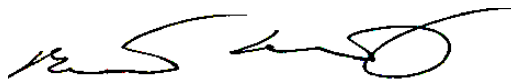
Based on the evidence presented, the administrative law judge concludes the claimant knowingly omitted material information to IWD when he failed to correctly report all wages earned from multiple employers when he filed for unemployment insurance benefits. On over 40 separate occasions, the claimant did not report any of the portion of his wages he was paid for each delivery of product. The claimant's repeated and intentional concealment of wages led to the claimant receiving an overpayment of unemployment insurance benefits. Claimant did not ever attempt to contact IWD to ask if he was acting in the appropriate manner in failing to disclose these wages. Rather, claimant simply chose to remove the money entirely from his calculations as he believed he was simply receiving the money as a reimbursement for automobile expenditures.

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 of over a year 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.

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.

DECISION:

The March 20, 2020 (reference 06) unemployment insurance decision is affirmed. The claimant was overpaid benefits. IWD correctly imposed the administrative penalty due to the claimant's misrepresentation.



Blair A. Bennett
Administrative Law Judge

April 29, 2020
Decision Dated and Mailed

bab/scn