

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RUBEN PEREZ
Claimant

APPEAL 19A-UI-10334-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 11/25/18
Claimant: Appellant (1)

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Code § 96.16(4) – Offenses and Misrepresentation

STATEMENT OF THE CASE:

Claimant filed an appeal from the December 19, 2019 (reference 3) unemployment insurance decision that found claimant was overpaid benefits and assessed a penalty. The parties were properly notified of the hearing. A telephone hearing was held on January 23, 2020, at 2:05 p.m. Claimant participated. Iowa Workforce Development (IWD) participated through Kasandra Ellenwood, Investigator II. Department’s Exhibits A – K were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant was overpaid benefits.
Whether a penalty was properly imposed.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant filed an original claim with an effective date of November 25, 2018. When claimant filed his claim, he agreed that he would read and understand the handbook.

With respect to “Ability to Work and Available for Work,” the handbook states:

Individuals must be able and available for work while claiming benefits. It is important to notify IWD of any condition or situation which would prevent and individual from working, accepting work, or looking for work the majority of the week. These situations may include, but are not limited to:

- Illness, injury or hospitalization
- Being in jail
- Attending school
- Being on vacation or out of town
- No childcare
- No transportation

Individuals should contact IWD to report any changes that could affect their benefits. (Exhibit H, p. 1)

The handbook also alerted the claimant 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, fines and imprisonment
- 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 (Exhibit H, p. 4).

IWD conducted an audit and discovered that claimant was incarcerated at Woodbury County Jail from September 18, 2019 until October 4, 2019. (Exhibit E, pp. 7 - 8) IWD contacted the Woodbury County Sheriff to confirm claimant's incarceration. (Exhibit E, pp. 9 - 10) An IWD investigator contacted claimant on December 9, 2019 to discuss the overpayment and potential for a penalty. (Exhibit G) Claimant stated he did not know that he could not receive unemployment while he was in jail. (Exhibit G) Claimant stated that if his work notified his wife that there was work available then he would ask the jail to release him to go to work. (Exhibit G) Claimant did not participate in the work release program. (Exhibit E, p. 19) Claimant had his wife file the weekly claims for him. (Claimant Testimony)

Claimant filed ongoing weekly claims for benefit weeks ending September 21, 2019 through October 5, 2019. (Exhibit E, p. 2) Because claimant was not available for work from September 18, 2019 through October 4, 2019 due to incarceration, IWD determined claimant was overpaid benefits. The agency established the overpayment based upon the following incorrect payments made to the claimant: (Exhibit E, p. 2)

WEEK ENDING	WAGES REPORTED	WAGES EARNED	BENEFITS PAID	BENEFITS ENTITLED	OVERPAYMENT/ (UNDERPAYMENT)
09/21/19			467.00	0.00	467.00
09/28/19			467.00	0.00	467.00
10/05/19			467.00	0.00	467.00
			TOTAL:		1,401.00

In addition to the overpayment, a 15% penalty was imposed, due to the overpayment arising from the claimant's misrepresentation of his availability for work in order to collect benefits.

REASONING AND CONCLUSIONS OF LAW:

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

Recovery of overpayment of benefits. 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 division of job service 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 division a sum equal to the overpayment.

The administrative law judge is persuaded claimant knew or should have known that he was not available for work while he was incarcerated and that claiming benefits during his incarceration could result in an overpayment, which he must repay. However, claimant had his wife file weekly claims for him for three weeks while he was in jail. Claimant's misrepresentations allowed him to collect unemployment insurance benefits for three weeks when he was not available for work. As a result, claimant was paid benefits in the amount of \$1,401.00, to which he was not entitled. The administrative law judge concludes that claimant was overpaid benefits and 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) provides, 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, in the discretion of the department, either be liable to have the sum deducted from any future benefits payable to the individual under this chapter or shall be liable to repay to the department for the unemployment compensation fund, a sum equal to the amount so received by the individual.
- 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 claimant knowingly misrepresented information to IWD when he filed for unemployment insurance benefits stating he was available for work while he was incarcerated and not on work release. Claimant was not able to file his weekly claims due to his incarceration and, therefore, had his wife file his weekly claims for him. Claimant's repeated and intentional misrepresentation of his availability led to him receiving an overpayment of unemployment insurance benefits.

Therefore, the administrative law judge concludes the calculated overpayment was correct, and claimant knowingly misrepresented material information to IWD when he claimed he was available for work from September 15, 2019 through October 5, 2019 while he was incarcerated from September 18, 2019 through October 4, 2019. 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 December 19, 2019 (reference 03) unemployment insurance decision is affirmed. Claimant was overpaid benefits. IWD correctly imposed the administrative penalty due to claimant's misrepresentation.

Adrienne C. Williamson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

Decision Dated and Mailed

acw/rvs