

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

**COREY R SUCHAN**  
Claimant

**APPEAL NO: 18A-UI-11940-JC-T**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/28/18**  
**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:**

The claimant/appellant, Corey R. Suchan, filed an appeal from the December 5, 2018 (reference 06) Iowa Workforce Development (“IWD”) unemployment insurance decision which concluded the claimant was overpaid \$5,525.00 in unemployment insurance benefits because he failed to accurately report earnings while concurrently filing claims for unemployment insurance benefits. IWD also imposed a 15% administrative penalty due to misrepresentation.

The parties were properly notified about the hearing. A first telephone hearing was scheduled to be held on January 4, 2019. On January 3, 2019, the claimant’s wife, Victoria Suchan, requested a postponement on his behalf due to him being hospitalized. The request was granted and a second hearing was scheduled for January 23, 2019.

On January 23, 2019, Investigator, Troy Shelley, requested a postponement due to an unexpected absence from the office due to injury. The request was granted and a third hearing was scheduled for 2:00 p.m. on February 12, 2019. An order from the administrative law judge was also rendered, confirming the date and time, and that the hearing would not be rescheduled barring emergency circumstances.

After proper notice, a third hearing was scheduled and conducted on February 12, 2019. At the time of the hearing, the administrative law judge attempted to contact the claimant at both numbers he registered, including a phone number associated with Victoria Suchan. A voicemail was provided at both numbers. Victoria Suchan contacted the Appeals Bureau within the grace period and stated she would be participating on behalf of Mr. Suchan, who was busy with snow removal. Between January 23, 2019 and the February 12, 2019 hearing, the claimant made no contact with the Appeals Bureau.

Pursuant to Iowa Admin. Code r. 871- 26.14(6), a telephone hearing was conducted with the available witnesses/representatives. Victoria Suchan, wife of claimant, participated in lieu of the claimant. Troy Shelley, Investigator, participated on behalf of IWD. IWD Exhibits A-C and Claimant Exhibit 1 (Claimant’s appeal statement) were admitted into evidence. The

administrative law judge took official notice of the claimant's unemployment insurance benefits records. 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 a claim for unemployment insurance benefits with an effective date of January 28, 2018. When the claim was established, the claimant was directed to read the Unemployment Insurance Handbook online or a hardcopy (Department Exhibit A2). 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 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
- ☐ 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 B1)

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 B3). Ms. Suchan was unaware whether the claimant had read the handbook or whether he contacted IWD for guidance. Rather, it was her understanding that the claimant had not previously filed a claim for unemployment insurance benefits and relied on advice from a co-worker (whose nickname was "Red" or "Raj") to direct him how to report.

IWD conducted an audit and discovered that Mr. Suchan had two employers, All Eastern IA Gutter Inc., and 20/20 Development Co. LC. (Department Exhibit A1). He received wages from both during the time period of January 28, 2018 through June 30, 2018, but failed to report all wages. IWD contacted both employers to verify the claimant's wages earned with employers (Department Exhibit A3).

A review of the administrative file reflects the claimant did not report the same wages as the employer. During the period of January 28, 2018 through June 30, 2018 when the claimant filed weekly continued claims, he repeatedly reported less wages than he earned. (Department Exhibit B7). In addition, for the week ending March 3, 2018, the claimant reported he earned \$0.00 in wages even though he earned \$661.00. Investigator Shelley noted there was no pattern to the claimant's wage reporting (such as net versus gross wages, being one week delayed, etc.) but that the claimant significantly underreported, sometimes only 20-25% of total wages earned for the week.

As a result of the employer's verification of wages, Investigator Shelley also attempted to contact the claimant. A notice to report was mailed to the claimant on November 21, 2018, which stated he may have been overpaid benefits in the amount of \$5,525.00, for failing to report his wages (Department Exhibit B4). The letter also informed Mr. Suchan that an overpayment may result in consequences including a 15% penalty (Department Exhibit B4). There was no evidence that the letter was returned as undeliverable. Ms. Suchan stated the claimant did not receive the letter and that there are sometimes mail issues due to the mailboxes in their community being centrally located together. As a result, the claimant did not contact IWD about the overpayment or misrepresentation.

Mr. Suchan's weekly benefit amount was \$328.00 (Department Exhibit A4). Because the claimant did not accurately report his wages during this same period, an overpayment of \$5,525.00 was determined by IWD (Department Exhibit A4). The agency established the overpayment based upon the following incorrect payments made to the claimant: (Department Exhibit A4).

	Wages Reported By		UI Benefits		Overpayment
Week Ending	Claimant	Employer	Amount Paid	Entitled	
02/03/18	\$250.00	\$309.00	\$160.00	\$101.00	\$59.00
02/10/18	\$36.00	\$339.00	\$328.00	\$71.00	\$257.00
02/17/18	\$180.00	\$494.00	\$230.00	\$0.00	\$230.00
02/24/18	\$198.00	\$345.00	\$212.00	\$0.00	\$212.00
03/03/18	\$0.00	\$661.00	\$328.00	\$0.00	\$328.00
03/10/18	\$38.00	\$465.00	\$328.00	\$0.00	\$328.00
03/17/18	\$89.00	\$458.00	\$321.00	\$0.00	\$321.00
03/24/18	\$89.00	\$738.00	\$321.00	\$0.00	\$321.00
03/31/18	\$200.00	\$505.00	\$210.00	\$0.00	\$210.00
04/07/18	\$52.00	\$319.00	\$328.00	\$91.00	\$237.00
04/14/18	\$89.00	\$448.00	\$321.00	\$0.00	\$321.00
04/21/18	\$82.00	\$312.00	\$328.00	\$98.00	\$230.00
04/28/18	\$89.00	\$530.00	\$321.00	\$0.00	\$321.00
05/05/18	\$110.00	\$583.00	\$300.00	\$0.00	\$300.00
05/12/18	\$100.00	\$517.00	\$310.00	\$0.00	\$310.00
05/19/18	\$140.00	\$666.00	\$270.00	\$0.00	\$270.00
05/26/18	\$200.00	\$403.00	\$210.00	\$0.00	\$210.00
06/02/18	\$100.00	\$374.00	\$310.00	\$0.00	\$310.00
06/09/18	\$200.00	\$562.00	\$210.00	\$0.00	\$210.00
06/16/18	\$100.00	\$432.00	\$310.00	\$0.00	\$310.00
06/23/18	\$255.00	\$432.00	\$155.00	\$0.00	\$155.00
06/30/18	\$100.00	\$436.00	\$310.00	\$0.00	\$310.00
				<b>SUBTOTAL:</b>	<b>\$5,525.00</b>
				<b>15% Penalty</b>	<b>\$828.75</b>
				<b>NET TOTAL</b>	<b>\$6,353.75</b>

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 25 occasions, the claimant reported less wages that he was actually paid. The claimant did not furnish any evidence to Investigator Shelley or for the hearing that the earnings reported by his employers were inaccurate. Ms. Suchan stated she and the claimant thought his rate of pay from All Eastern Iowa Gutter Inc. was \$10.00 per hour, not \$13.00 but had no information to show he had been paid at that rate of pay. Ms. Suchan had no other information available about how the claimant calculated his wages each week when making his weekly continued claims. She also stated it was his first time collecting unemployment insurance benefits. Mr. Suchan, in his appeal letter, offered the same explanation for his conduct (Claimant Exhibit 1).

## **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.

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 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 B1). However, the claimant misrepresented wages earned each week for 25 weeks as he filed weekly continued claims for unemployment insurance benefits during the same time (Department Exhibit A4). No evidence was presented that the wages reported by the employer to IWD were inaccurate or incorrect. If the claimant lacked experience or knowledge on how to file his claims, he could have contacted IWD, or alternately, consulted with the claimant handbook, which outlines reporting of wages.

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 \$5,525.00, to which he was not entitled (Department Exhibit A4). 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) provides:

4. Misrepresentation.

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 of his wages earned from January 28, 2018 through June 30, 2018 and concurrently filed for unemployment insurance benefits. On 25 separate occasions, the claimant misrepresented his wages by underreporting his wages. The claimant's wages he reported were sometimes only 20-25% of total wages earned for the week between his two employers. The administrative law judge is not persuaded this was due to a single mistake, an inadvertent error or miscalculation. In addition, for one week the claimant reported he earned \$0.00 for the week when he earned \$661.00. 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 January 28, 2018 through June 30, 2018 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.

#### **DECISION:**

The December 5, 2018 (reference 06) unemployment insurance decision is affirmed. The claimant was overpaid benefits. IWD correctly imposed the administrative penalty due to the claimant's misrepresentation.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

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