

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CARLA J BAINBRIDGE
Claimant

APPEAL 22A-UI-08259-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 03/15/20
Claimant: Appellant (4)**

Iowa Code § 96.3(7) – Overpayment
Iowa Code § 96.16(4) – Offenses and Misrepresentation
Iowa Code § 96.5(8) – Administrative Penalty
Iowa Code § 96.5(5) – Other Compensation
Iowa Admin. Code 871-25.1 - Definitions
Iowa Admin. Code 871-25.9 – Administrative Penalties

STATEMENT OF THE CASE:

On March 30, 2022, Carla Bainbridge (claimant/appellant) filed an appeal from the Iowa Workforce Development (IWD) decision dated March 23, 2022 (reference 06) that found claimant was overpaid Lost Wage Assistance Payments in the amount of \$1,500.00 for five weeks between July 26 and September 5, 2020 due to a failure to report wages earned. The decision also imposed a 15 percent penalty due to misrepresentation; warned claimant that legal action may be taken to recover the overpayment, including the filing of a lien; and determined an administrative penalty would be assessed in the 36 months following the last week of misrepresentation.

The parties were properly notified of the hearing. A telephone hearing was held on May 31, 2022. The claimant participated personally. IWD Investigation and Recovery Unit participated by Investigator Kara Harris. Appeal Nos. 22A-UI-08254, 22A-UI-08256, 22A-UI-08258, and 22A-UI-08259 are related and were heard together, forming a single hearing record. IWD Exhibits A-C were admitted. The administrative law judge took official notice of the administrative record.

ISSUE(S):

Was the claimant overpaid Lost Wage Assistance Payments (LWAP)?

Did claimant fail to report wages earned?

Were penalties properly imposed?

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 March 15, 2020. Claimant filed weekly continued claims through December 12, 2020. Claimant's weekly benefit amount was \$175.00. Claimant did not report earning wages in any of these weeks. An investigatory audit was subsequently performed.

Claimant was earning wages from Blackhawk Lifecare Center during each week filed. The wages claimant earned were in excess of her weekly benefit amount plus \$15.00 for all but one week filed, the week ending August 8, 2020.

Claimant did not report the wages earned at Blackhawk Lifecare Center because she believed she was filing with regard to her self-employment as a hair stylist and she was not earning money from that business. Claimant did not read the claimant handbook and did not understand that she was to report all wages earned each week, regardless of source. IWD determined imposition of a 15 percent penalty was appropriate due to claimant failing to read and understand the claimant handbook and file weekly claims accordingly.

Claimant received LWAP in the amount of \$300.00 per week for a total of six weeks between July 26 and September 5, 2020. Claimant was eligible for unemployment insurance benefits in the amount of \$30.00 and Lost Wage Assistance Payments in the amount of \$300.00 in the week ending August 8, 2020. Claimant was ineligible for benefits in each other week filed due to earning wages in excess of her weekly benefit amount plus \$15.00.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated March 23, 2022 (reference 06) that found claimant was overpaid Lost Wage Assistance Payments in the amount of \$1,500.00 for five weeks between July 26 and September 5, 2020 due to a failure to report wages earned is MODIFIED in favor of appellant.

I. Was the claimant overpaid?

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.

On August 8, 2020, President Trump issued a memorandum to provide additional financial assistance to those individuals receiving unemployment benefits that met the eligibility requirements of the program through a grant from FEMA. The LWA program required claimants to be eligible for a weekly benefit amount of at least \$100.00 and the LWA payment was made to

claimants in combination with a payment of at least \$1.00 in benefits stemming from either State of Iowa funded unemployment insurance benefits, Federal Pandemic Emergency Unemployment Compensation (PEUC) benefits program, Pandemic Unemployment Assistance (PUA) program, Extended Benefits program, Voluntary Shared Work program, Short Term Compensation program, or Trade Act benefits program. The weekly benefit amount of the LWA program was \$300.00 and it ran from July 26, 2020 through September 5, 2020. Therefore, if a claimant was not eligible for weekly benefits from an underlying program, they were not eligible for LWA benefits as a weekly supplemental benefit.

The *Memorandum on Authorizing the Other Needs Assistance Program for Major Disaster Declarations Related to Coronavirus Disease 2019* provided in pertinent part:

Sec 4. Assistance Program for Lost Wages.

- (a) For purposes of this memorandum, “State” includes the territories and the District of Columbia, and “Governor” includes the chief executive thereof.
- (b) To help meet the needs of the American people during this unprecedented and continuously evolving public health crisis, the Secretary of Homeland Security (Secretary), acting through the FEMA Administrator, is authorized to make available other needs assistance for lost wages, in accordance with section 408(e)(2) of the Stafford Act (42 U.S.C. 5174(e)(2)) (“lost wages assistance”), to the people of a State, including the members of any tribe residing therein, if the Governor requests lost wages assistance and agrees to administer delivery and provide adequate oversight of the program, for a major disaster I declared pursuant to section 401 of the Stafford Act (42 U.S.C. 5170) for COVID-19, under the following conditions:
 - (i) the Governor requests from the FEMA Administrator a grant for lost wages assistance pursuant to 42 U.S.C. 5174(f)(1)(A) and agrees to the cost-sharing requirement of 42 U.S.C. 5174(g)(2); and
 - (ii) the Governor administers delivery of financial assistance for lost wages in conjunction with the State’s unemployment insurance system.
- (c) In exercising this authority, the Secretary, acting through the FEMA Administrator, shall, subject to the limitations above, approve a lost wages assistance program that authorizes the Governor to provide a \$400 payment per week, which shall reflect a \$300 Federal contribution, to eligible claimants from the week of unemployment ending August 1, 2020.
- (d) For purposes of this memorandum, the term “Eligible claimants” means claimants who:
 - (i) receive, for the week lost wages assistance is sought, at least \$100 per week of any of the following benefits:
 - (A) Unemployment compensation, including Unemployment Compensation for Federal Employees (UCFE) and Unemployment Compensation for Ex-Service members (UCX), under section 8501 of title 5, United States Code;
 - (B) Pandemic Emergency Unemployment Compensation (PEUC), under section 2107 of the CARES Act;
 - (C) Pandemic Unemployment Assistance (PUA), under section 2102 of the CARES Act;
 - (D) Extended Benefits (EB), under section 3304 of title 26, United States Code;
 - (E) Short-Time Compensation (STC), under section 3306(v) of title 26, United States Code;
 - (F) Trade Readjustment Allowance (TRA), under sections 2291 through 2293 of title 19, United States Code; and

- (G) Payments under the Self-Employment Assistant (SEA) program, under section 3306(t) of title 26, United States Code; and
- (ii) provide self-certification that the claimant is unemployed or partially unemployed due to disruptions caused by COVID-19.
- (e) The authority vested in the Secretary, acting through the FEMA Administrator, to approve lost wages assistance shall not be construed to encompass authority to approve other forms of assistance.

The state is responsible for refunding to FEMA any unobligated balances that FEMA paid that are not authorized to be retained per 2 C.F.R. 200.343(d) and the state is also responsible for recovering assistance awards from claimants obtained fraudulently. See UIPL No. 27-20 Change 1 dated August 17, 2020 citing 44 C.F.R. 206.120(f)(4 and 5).

44 C.F.R. § 206.16 provides as follows:

- (a) The applicant must agree to repay to FEMA (when funds are provided by FEMA) and/or the State (when funds are provided by the State) from insurance proceeds or recoveries from any other source an amount equivalent to the value of the assistance provided. In no event must the amount repaid to FEMA and/or the State exceed the amount that the applicant recovers from insurance or any other source.
- (b) An applicant must return funds to FEMA and/or the State (when funds are provided by the State) when FEMA and/or the State determines that the assistance was provided erroneously, that the applicant spent the funds inappropriately, or that the applicant obtained the assistance through fraudulent means.

Claimant received LWAP in the amount of \$300.00 per week for a total of six weeks between July 26 and September 5, 2020. Claimant was eligible for unemployment insurance benefits in the amount of \$30.00 and Lost Wage Assistance Payments in the amount of \$300.00 in the week ending August 8, 2020. Claimant was ineligible for benefits in each other week filed due to earning wages in excess of her weekly benefit amount plus \$15.00. Because claimant was ineligible for benefits she was also ineligible for LWAP. She was therefore overpaid LWAP in the amount of \$1,500.00.

II. Were penalties properly imposed?

Iowa Code section 96.16(4) provides:

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.

Iowa Admin. Code 871—25.1, Definitions, provides in relevant part:

“Administrative penalty” means the disqualification of a claimant from the receipt of benefits due to fraud or misrepresentation or the willful and knowing failure to disclose a material fact for a period of not more than the remaining benefit year, including the week in which such determination is made.

...

“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.

...

“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 Code section 96.5(8) provides:

Administrative penalty. If the department finds that, with respect to any week of an insured worker’s unemployment for which such person claims credit or benefits, such person has, within the thirty-six calendar months immediately preceding such week, with intent to defraud by obtaining any benefits not due under this chapter, willfully and knowingly made a false statement or misrepresentation, or willfully and knowingly failed to disclose a material fact; such person shall be disqualified for the week in which the department makes such determination, and forfeit all benefit rights under the unemployment compensation law for a period of not more than the remaining benefit period as determined by the department according to the circumstances of each case. Any penalties imposed by this subsection shall be in addition to those otherwise prescribed in this chapter.

The administrative law judge finds the 15 percent penalty was not properly imposed. A finding of fraud is required to impose a 15 percent penalty. Claimant did not commit fraud. Fraud requires knowledge and intent. Claimant’s actions were at worst negligent in that she did not read and understand the claimant handbook as required.

The administrative law judge finds claimant’s actions don’t rise to the level of misrepresentation, either. To mislead, deceive, or omit again requires some kind of knowledge or intent which is not

present here. The penalties set forth in Iowa Code 96.16(4)a, including the filing of a lien, were not properly imposed either.

Finally, because the administrative law judge finds claimant conduct did not constitute fraud or misrepresentation, the administrative penalty provided for in Iowa Code 96.5(8) was not properly imposed either.

Claimant was not eligible for benefits during almost all the weeks she was filing due to a failure to report wages and was overpaid as a result. However, the administrative law judge cannot find based on the evidence available that claimant's conduct constituted fraud or misrepresentation such that further sanctions are proper.

DECISION:

The decision dated March 23, 2022 (reference 06) that found claimant was overpaid Lost Wage Assistance Payments in the amount of \$1,500.00 for five weeks between July 26 and September 5, 2020 due to a failure to report wages earned is MODIFIED in favor of appellant. Claimant was overpaid LWAP in the amount of \$1,500.00 due to a failure to properly report wages. However, the penalties were not properly imposed.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

June 2, 2022
Decision Dated and Mailed

abd/abd

Note to Claimant:

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.

If this decision determines you have been overpaid federal pandemic-related benefits you may request a waiver of the overpayment. Instructions for requesting a waiver can be found at <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>. If this decision becomes final and you are not eligible for a waiver, you will have to repay the benefits you received.

Individuals who do not qualify for regular unemployment insurance benefits and were unemployed between February 2, 2020, and June 12, 2021 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.** To apply for PUA go to <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-appeals> and click the link in the last paragraph under "WHAT TO EXPECT FROM THE HEARING." **The authorization number is the PIN you used for the hearing.**

If this decision becomes final and you are not eligible for PUA, you may have an overpayment of benefits.