

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**DEBRA L NIELSEN**  
Claimant

**APPEAL 19A-UI-08366-CL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 08/19/18  
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 October 24, 2019, the claimant/appellant, Debra Nielsen, filed an appeal from the October 17, 2019 (reference 04) unemployment insurance decision which concluded the claimant was overpaid unemployment insurance benefits because she failed to accurately report earnings while receiving 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 November 18, 2019. The claimant participated personally. Daniel Noonan, Investigator, participated on behalf of IWD. IWD Exhibit pages 1 through 31 (which included claimant's appeal and proposed exhibits) were admitted into the record.

**ISSUES:**

Was claimant overpaid unemployment insurance benefits?  
Were the 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 August 19, 2018. Claimant's weekly benefit amount is \$467.00.

The claimant agreed to read the Unemployment Insurance Handbook when she filed the initial claim. The Unemployment Insurance Handbook includes instructions for properly filing weekly continued claims for benefits. The Handbook instructs claimants to report gross earnings, vacation pay, and holiday pay. The Handbook warns that failure to accurately report earnings can result in overpayment and other penalties.

Claimant did not read the Unemployment Insurance Handbook.

When entering weekly continued claims, claimant was required to certify that she accurately reported her earnings, vacation pay, and holiday pay each week she filed a weekly claim and that her failure to do so could result in an overpayment or other penalties.

On November 21, 2018, claimant began working for Myron Green Corporation. Myron Green Corporation paid claimant \$13.60 per hour. Claimant worked Monday through Friday.

Claimant continued to file weekly continued claims for unemployment insurance benefits and continued to receive benefits despite the fact that many weeks she worked full-time hours for Myron Green Corporation. Claimant did not accurately report wages earned.

On October 2, 2019, Investigator Daniel Noonan initiated an audit of claimant's claim for unemployment insurance benefits. A fraud detection software program utilized by IWD alerted Noonan of possible fraudulent activity on the account.

On October 3, 2019, Investigator Noonan contacted Myron Green Corporation to verify the claimant's wages earned during the time period in question. The employer accurately reported claimant's hours worked and wages earned from September 2, 2018, through August 17, 2019.

On October 4, 2019, Investigator Noonan sent claimant a letter notifying her of the audit of her claim and a telephone call on October 15, 2019. Claimant participated in the telephone call. During the phone call, claimant stated that her son filed many of the weekly claims on her behalf, but reported the wages as she directed. Claimant stated that the benefit payments were disbursed to her debit card and she used the funds herself. Claimant asserted she was instructed by an IWD employee that she did not have to report the first \$116.00 of her wages, but was unable to give a clear answer as to why the difference between what she reported and actually earned was often far above the amount of \$116.00. Claimant stated that the last two weeks where she did not report any wages was her own error, which she did not contact IWD to correct.

On October 17, 2019, Investigator Noonan issued a reference 04 unemployment insurance decision finding claimant overpaid unemployment insurance benefits in the amount of \$8,309.00 based on her failure to accurately report wages earned with Myron Green Corporation during the 37 weeks between November 25, 2018, and August 17, 2019. (Department Exhibit page 20). The agency established the overpayment based upon the following incorrect payments made to the claimant: (Department Exhibit pages 4 and 5)

WEEK ENDING	WAGES REPORTED	WAGES EARNED	DIFFERENCE BETWEEN REPORTED AND EARNED	BENEFITS PAID	BENEFITS ENTITLED	OVERPAYMENT
12/01/18	00	597.00	597.00	467.00	00	467.00
12/08/18	00	344.00	344.00	467.00	239.00	228.00
12/15/18	219.00	610.00	391.00	364.00	00	364.00
12/22/18	330.00	567.00	237.00	253.00	00	253.00
12/29/18	260.00	413.00	153.00	323.00	170.00	153.00
01/05/19	320.00	565.00	245.00	263.00	00	263.00
01/12/19	339.00	476.00	137.00	244.00	107.00	137.00
01/19/19	339.00	590.00	251.00	244.00	00	244.00
01/26/19	182.00	351.00	169.00	401.00	232.00	169.00
02/02/19	339.00	578.00	239.00	244.00	00	244.00
02/09/19	273.00	347.00	74.00	310.00	236.00	74.00
02/16/19	385.00	590.00	205.00	198.00	00	198.00

02/23/19	384.00	576.00	192.00	199.00	00	199.00
03/02/19	384.00	588.00	204.00	199.00	00	199.00
03/09/19	400.00	602.00	202.00	183.00	00	183.00
03/16/19	384.00	539.00	155.00	199.00	00	199.00
03/23/19	400.00	592.00	192.00	183.00	00	183.00
03/30/19	390.00	612.00	222.00	193.00	00	193.00
04/06/19	384.00	570.00	186.00	199.00	00	199.00
04/13/19	339.00	510.00	171.00	244.00	00	244.00
04/20/19	364.00	572.00	208.00	219.00	00	219.00
04/27/19	377.00	580.00	203.00	206.00	00	206.00
05/04/19	384.00	582.00	198.00	199.00	00	199.00
05/11/19	400.00	583.00	183.00	183.00	00	183.00
05/18/19	385.00	583.00	198.00	198.00	00	198.00
05/25/19	390.00	575.00	185.00	193.00	00	193.00
06/01/19	360.00	568.00	208.00	223.00	00	223.00
06/08/19	365.00	575.00	210.00	218.00	00	218.00
06/15/19	390.00	582.00	192.00	193.00	00	193.00
06/22/19	390.00	589.00	199.00	193.00	00	193.00
06/29/19	364.00	494.00	130.00	219.00	00	219.00
07/06/19	364.00	578.00	214.00	219.00	00	219.00
07/13/19	390.00	570.00	180.00	193.00	00	193.00
07/20/19	390.00	560.00	170.00	193.00	00	193.00
07/27/19	450.00	559.00	109.00	133.00	00	133.00
08/10/19	00	567.00	567.00	467.00	00	467.00
08/17/19	00	562.00	562.00	467.00	00	467.00
				<b>SUBTOTAL:</b>		8,309.00
				<b>15% Penalty</b>		1,246.35
				<b>TOTAL</b>		<b>\$9,555.35</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.

#### **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.**

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. Claimant does not dispute the amount of her earnings as reported by Myron Green Corporation. Claimant does not dispute the amount IWD represented she reported as wages and received in benefits. The calculations show, as noted in the table above, the claimant was overpaid benefits in the amount of \$8,309.00, to

which she was not entitled. The claimant provided an alternative calculation, as seen in 28 and 29 of the Department's Exhibit. In claimant's table, she added \$116.00 to the wages she reported each week to come up with the amount of the overpayment she believes is correct. Claimant's calculations are inaccurate because they do not take into account how much she was actually paid by Myron Green Corporation. The administrative law judge concludes the overpayment was correctly calculated by IWD.

**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 Myron Green Corporation while claiming unemployment insurance benefits.

Claimant admits that she was aware she did not properly report wages during the two weeks ending August 17, 2019, and took no steps to correct her mistakes.

For the other weeks, claimant asserts she underreported her wages because she believed she was not required to report the first \$116.00 of her wages on her weekly claims. But the actual amount she reported every week does not support that claim. As demonstrated in the column marked "**DIFFERENCE BETWEEN REPORTED AND EARNED**" above, the difference between what claimant earned and what claimant reported far exceeds \$116.00 per week on every week but two.

To some extent, claimant pleads ignorance. Claimant asserts she did not always realize she was being paid holiday and vacation pay and did not realize how much she was being paid per hour or how many hours she was working per week. But is claimant's job to figure those things out. 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 exceeding \$8,000.00.

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 during the weeks between December 1, 2018, and August 17, 2019, while claiming 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 October 17, 2019 (reference 04) 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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Christine A. Louis  
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November 22, 2019  
Decision Dated and Mailed

cal/scn