

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**BRAD K GOMEZ**  
Claimant

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**APPEAL 20A-UI-02562-B2-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/31/17  
Claimant: Appellant (1)**

Iowa Code § 96.5(13) – Disqualification due to Outstanding Fraud Overpayment

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the March 25, 2020 (reference 08) Iowa Workforce Development (“IWD”) unemployment insurance decision that found claimant was not eligible for unemployment insurance benefits due to an outstanding fraud overpayment balance. The parties were properly notified of the hearing. A telephone hearing was held on April 24, 2020. The claimant, Gomez, participated personally. Claimant Exhibit A was admitted. The administrative law judge took official notice of the claimant’s unemployment insurance benefits records.

**ISSUE:**

Is the claimant ineligible for benefits due to an outstanding fraud overpayment balance?

**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 of 2017, 2018 and 2019. A decision was issued on 3-25-20 which found that the claimant was overpaid benefits of \$3,110.00, including interest and a 15% penalty due to fraud. Claimant did appeal the decision and said appeal was denied in case 20A-UI-02561-B2.

To date, claimant has failed to pay the outstanding overpayment amount owed, including interest, penalties, and lien fees. The current outstanding balance owed is \$3088.00, plus a 15% penalty.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is not eligible for benefits until the balance of the benefits received by the claimant due to misrepresentation, including all penalties, interest, and lien fees are paid in full. Benefits are denied at this time.

Iowa Code section 96.5(13) provides:

Overpayment resulting in disqualification. If the department finds that an individual has received benefits by reason of misrepresentation pursuant to section 96.16, such individual shall be disqualified for benefits until the balance of the benefits received by the individual due to misrepresentation, including all penalties, interest, and lien fees, is paid in full.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* Here, claimant is not denying the figures presented. Rather, he argues that wages received for each delivery should not be considered as wages.

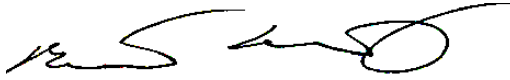
Claimant currently owes a balance of \$3,088.00 due to a decision issued on March 25, 2020 which found that the claimant failed to report or incorrectly reported wages, resulting in determination that the claimant engaged in misrepresentation pursuant to Iowa Code § 96.16(4). Because this fraud balance remains unpaid, claimant is not eligible for benefits at this time. See Iowa Code § 96.5(13).

*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 25, 2020 (reference 08) unemployment insurance decision is affirmed. The claimant is not eligible for benefits. Benefits are withheld until the claimant has paid the unpaid fraud overpayment balance, plus penalties, interest, and lien fees, provided claimant is otherwise eligible.

Benefits are withheld until the claimant has paid the 15% fraud penalty. Claimant must additionally meet all other eligibility requirements.



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Blair A. Bennett  
Administrative Law Judge

April 29, 2020  
Decision Dated and Mailed

bab/scn