

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ROY J CAMPBELL**  
Claimant

**APPEAL 19A-UI-03430-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 05/06/18  
Claimant: Appellant (1)**

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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, Roy J. Campbell, filed an appeal from the April 15, 2019 (reference 08) Iowa Workforce Development (“IWD”) unemployment insurance decision which concluded the claimant was overpaid unemployment insurance benefits because he failed to accurately report earnings while concurrently filing weekly claims for unemployment insurance benefits. IWD also imposed a 15% administrative penalty due to misrepresentation.

The parties were properly notified of the hearing. A telephone hearing was held on May 22, 2019. The claimant, Roy J. Campbell, participated personally. Kasandra Ellenwood, Investigator, participated on behalf of IWD. IWD Exhibits A-G were admitted. 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 May 6, 2018. The claimant filed his claim after resigning from the Iowa Interstate Railroad.

When the claim was established, Mr. Campbell was directed to read the Unemployment Insurance Handbook online (Ellenwood testimony). 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 (Department Exhibit E-1).

The claimant stated he did not read the handbook or contact IWD for assistance on how to file his claim for unemployment insurance benefits, even though he believed it to be the first time he had filed a claim for benefits. Rather, he relied upon friends and former co-workers who had filed in the past for advice.

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 (Department Exhibit E-3, E-4, E-5).

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. (Department exhibit E-5).

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 E-2)

IWD conducted an audit and discovered that Mr. Campbell received wages from Mercy Medical Center and Iowa Department of Corrections during the time period of November 25, 2018-March 16, 2019, but failed to report the wages. IWD contacted the employers to verify the claimant's wages earned during this time (Department Exhibit C). The claimant performed work for Mercy Medical Center during the period of November 25, 2018 - December 29, 2018. He began work for Iowa Department of Corrections December 30, 2018 and worked there until May 2019.

Investigator Ellenwood reviewed the claimant's responses to his online claims which are stored on agency software. Each week, from November 25, 2018 - March 16, 2019, the claimant reported he earned \$0.00 in wages, when he filed his weekly continued claim even though he was performing work each week (Ellenwood testimony).

As a result of the employer's verification of wages, Investigator Ellenwood also contacted the claimant. The claimant was mailed a notice which stated he may have been overpaid benefits in the amount of \$7,339.00, for failing to report his wages (Department Exhibit C). The letter also informed him that an overpayment may result in consequences including a 15% penalty (Department Exhibit C).

The claimant contacted Investigator Ellenwood on March 18, 2019 in response to the letter and participated in a scheduled fact-finding interview with her on March 29, 2019. The claimant did not dispute the overpayment amount or provide evidence that the wages reported by the employer were inaccurate. The claimant stated he did not report the wages because he interpreted the question "did you perform any work for the week ending \_" to mean "did you perform any work for Iowa Interstate Railroad, and because he had not, he reported "no" (Campbell testimony). He also informed Investigator Ellenwood that he thought if he collected unemployment insurance benefits "against" Iowa Interstate Railroad, that they may rehire him, because he believed the employer would rather pay him to work than pay his unemployment benefits (Department Exhibit G, Campbell testimony).

Mr. Campbell's weekly benefit amount was \$473.00 (Department Exhibit C-3). Because the claimant did not accurately report his wages during this same period, an overpayment of \$7,339.00 was determined by IWD (Department Exhibit c-3). The agency established the overpayment based upon the following incorrect payments made to the claimant: (Department Exhibit C-3)

Week Ending	Wages Reported By		UI Benefits		Underpayment	Overpayment
	Claimant	Employer	Amount Paid	Entitled		
09/19/18	\$0.00	\$0.00	\$473.00	\$473.00		\$0.00
10/06/18	\$0.00	\$0.00	\$473.00	\$473.00		\$0.00
10/13/18	\$0.00	\$0.00	\$473.00	\$473.00		\$0.00
10/20/18	\$349.00	\$0.00	\$124.00	\$473.00	\$349.00	\$0.00
10/27/18	\$0.00	\$0.00	\$473.00	\$473.00		\$0.00
11/03/18	\$0.00	\$0.00	\$473.00	\$473.00		\$0.00
11/17/18	\$0.00	\$0.00	\$473.00	\$473.00		\$0.00
11/24/18	\$0.00	\$0.00	\$473.00	\$473.00		\$0.00
12/01/18	\$0.00	\$482.00	\$473.00	\$109.00		\$364.00
12/08/18	\$0.00	\$647.00	\$473.00	\$0.00		\$473.00
12/15/18	\$0.00	\$654.00	\$473.00	\$0.00		\$473.00
12/22/18	\$0.00	\$622.00	\$473.00	\$0.00		\$473.00
12/29/18	\$0.00	\$943.00	\$473.00	\$0.00		\$473.00
01/05/19	\$0.00	\$471.00	\$473.00	\$120.00		\$353.00
01/12/19	\$0.00	\$782.00	\$473.00	\$0.00		\$473.00
01/19/19	\$0.00	\$780.00	\$473.00	\$0.00		\$473.00
01/26/19	\$0.00	\$783.00	\$473.00	\$0.00		\$473.00
02/02/19	\$0.00	\$780.00	\$473.00	\$0.00		\$473.00
02/09/19	\$0.00	\$780.00	\$473.00	\$0.00		\$473.00
02/16/19	\$0.00	\$787.00	\$473.00	\$0.00		\$473.00

02/23/19	\$0.00	\$798.00	\$473.00	\$0.00		\$473.00
03/02/19	\$0.00	\$780.00	\$473.00	\$0.00		\$473.00
03/09/19	\$0.00	\$624.00	\$473.00	\$0.00		\$473.00
03/16/19	\$0.00	\$624.00	\$473.00	\$0.00		\$473.00
TOTAL						\$7,339.00

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 sixteen occasions, the claimant responded to his weekly continued claim that he had not performed any work and that he did not earn any wages. The claimant does not dispute the overpayment amount but argued that a penalty should not be imposed. He offered several reasons why, including that it was his first time applying for benefits, that IWD should have caught the issue sooner rather than let him collect benefits, and that he believed the question for the weekly continued claim was "did you perform any work for Iowa Interstate Railroad" for the week ending \_\_", and not "did you perform work for the week ending \_\_".

**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 E). The claimant was responsible for understanding the rules and procedures, and elected not to read the handbook or contact IWD for assistance even though he reported it was his first time filing a claim for unemployment insurance benefits.

However, the claimant reported he did not perform work or earn wages for the period of November 25, 2018 - March 16, 2019, and misrepresented he was unemployed as he filed weekly continued claims for unemployment insurance benefits during the same time. The claimant was actually performing full-time employment. No evidence was presented that the wages reported by the employer to IWD were inaccurate or incorrect. 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 \$7,339.00, to which he was not entitled (Department Exhibit C-3, C-4). 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) 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 his wages earned from Mercy Medical Center and Iowa Department of Corrections when he filed for unemployment insurance benefits.

The administrative law judge was not persuaded by the claimant's interpretation of whether he performed work for the week that he was filing a claim for benefits meant whether he performed work for his last employer, Iowa Interstate Railroad. Reasonably, if the question was meant to address whether the claimant had performed work for his last employer, the question would say something to the effect of "did you perform work for your last employer for the week ending \_". Additionally, if the claimant had returned to work for his last employer, it would not be logical

that he would also then make a claim for benefits that week, because he would no longer be unemployed.

On sixteen separate occasions, the claimant reported he earned \$0.00 in wages but in fact performed full-time work (Department C-5, C-6, C-7). 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 November 25, 2018 - March 16, 2019, 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 April 15, 2019 (reference 08) 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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