

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SCOTT M KEITH
Claimant

APPEAL 19A-UI-00221-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 12/16/18
Claimant: Appellant (1)

Iowa Code §96.5(8) – Administrative Penalty
Iowa Code §96.4(3) – Unemployment Insurance Benefits Eligibility
Iowa Admin. Code r. 871-25.1 – Misrepresentation & Fraud

STATEMENT OF THE CASE:

The claimant/appellant, Scott M. Keith, filed an appeal from the January 10, 2019 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision which concluded he was ineligible to receive unemployment insurance benefits from January 6, 2019 through December 14, 2019, because he made false statements concerning his employment and earnings from December 27, 2015 through April 28, 2018. The disqualification was imposed through administrative penalty.

The parties were properly notified of the hearing. A telephone hearing was held on January 25, 2019 with Administrative Law Judge, Jennifer L. Beckman. The claimant, Scott M. Keith, participated personally. Sean Clark, Investigator, participated on behalf of IWD. IWD Exhibits 1-5 were admitted without objection. 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:

Whether IWD correctly established a claim for an overpayment of unemployment insurance benefits?

Did IWD properly impose an administrative 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 November 22, 2015. The claimant filed for and received benefits during the period December 27, 2015 through April 28, 2018. Following an investigation through IWD, the agency concluded the claimant was overpaid \$4,431.00 when he failed to report wages he earned with Country Club Lawn Care while concurrently filing for unemployment insurance benefits

(Department Exhibit 2-4). A 15% penalty was also imposed with the overpayment, due to the claimant's misrepresentation of facts to collect unemployment insurance benefits (Department Exhibit 2-4).

An initial decision notifying Mr. Keith of the overpayment and 15% penalty was mailed to his last known address on August 27, 2018 (Department Exhibit 2-4). The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by September 6, 2018. Mr. Keith received the initial decision, did not file any appeal, and that decision has become final without change in effect. At the hearing, he did not dispute the overpayment amount or offer any testimony, regarding imposition of the 15% penalty, or refute his failure to appeal the overpayment.

Mr. Keith then filed a claim for benefits with an effective date of December 16, 2018, in response to a temporary layoff from Country Club Lawn Care. That new claim triggered a review of whether there was any overpayment within the last 36 months and whether there should be a disqualification because the claimant had an establish overpayment related to fraud. IWD investigator, Sean Clark, sent Mr. Keith a letter dated January 2, 2019, informing him of IWD's intent to disqualify him for unemployment benefits for a period of time because of the prior false statements or misrepresentations (Department Exhibit 2-1). Mr. Keith did respond to the letter.

IWD imposed the disqualification sanction through its decision on January 10, 2019, (reference 01), as an administrative penalty for Mr. Keith's prior false statements from December 27, 2015 through April 28, 2018 (Department Exhibit 1). IWD imposed a disqualification period of remainder of the benefit year for underreporting wages (Department Exhibit 1). Investigator Clark relied upon guidelines from the agency, (Department Exhibits 5-1 and 5-2) which included that he made false statements for more than nine weeks, and asserted this penalty is consistent with prior agency action for claimants who have made similar misrepresentations for similar periods of time.

Mr. Keith opined that his employer should have had to report his wages rather than him to avoid inaccuracy, which led to the overpayment. He stated 2015 was the first time filing for unemployment insurance benefits but he did not read the required claimant handbook. He stated he "guestimated" the wages to report each week and offered no explanation for why on seven weeks he had reported \$0 in wages when he had performed work. He did receive the original overpayment and 15% decision but chose not to appeal it because he is a "hands off" kind of guy. He provided no additional evidence regarding the underlying misrepresentation that led to the overpayment of benefits and subsequent penalties.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was overpaid benefits, and was properly disqualified from benefits due to misrepresentation.

Issuance of overpayment:

When IWD determines an individual who received unemployment benefits was ineligible to receive benefits, IWD must recoup the benefits received, whether or not the individual acted in good faith and was not otherwise at fault. Iowa Code § 96.3(7). IWD may, in its discretion, recover the overpayment either by deducting a sum equal to the overpayment from any future benefits payable to the individual, or by collecting a sum equal to the overpayment directly from the individual.

In this case, the claimant applied for and received benefits in the amount of \$4,431.00 during the period December 27, 2015 through April 28, 2018. During this time, Mr. Keith also failed to accurately report all wages he earned with Country Club Lawn Care while concurrently filing for unemployment insurance benefits. Mr. Keith did not appeal the prior decision, issued on August 27, 2018 (Department Exhibit 2-4) assessing an overpayment due to misrepresentation, in a timely manner. That decision became final on September 6, 2018. Accordingly, there is no evidence to refute the claimant's overpayment and subsequent 15% penalty. Therefore, the administrative law judge concludes the agency properly calculated the claimant's overpayment and assessment of a 15% penalty.

Administrative Penalty and Eligibility for Benefits:

IWD may impose an administrative penalty if an insured person has, within the preceding 36 calendar months, willfully and knowingly made a false statement or misrepresentation, or willfully and knowingly failed to disclose a material fact, with the intent to defraud by obtaining benefits the person is not entitled to. *Iowa Code §96.5(8)*. The person is disqualified for the week in which IWD makes the determination and forfeits all benefit rights to unemployment insurance benefits for a period of not more than the remaining benefit period as determined by IWD. *Id.* IWD's investigator has broad discretion to determine the specific penalty for deliberate falsification for the purpose of obtaining or increasing unemployment insurance benefits. *871 IAC 25.9(2)*. "The degree and severity of penalty shall be determined at the discretion of the investigator and shall be based upon the nature of the offense and the facts." *871 IAC 25.9(2)c*. The administrative penalty recommended for falsification ranges from three weeks through the end of the benefit year. *Id.* This administrative penalty may be imposed in addition to a prior 15% penalty in conjunction with an overpayment.

"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. The statute defines the term knowingly as "having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the requirement or prohibition involved." *871 IAC 25.1*.

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.*

An IWD investigator exercises his or her discretion to determine the degree and severity of the penalty, based on the nature of the offense and facts, and Investigator, Sean Clark, described his rationale for the imposition of penalty. Mr. Clark relied upon the claimant's reporting of wages, benefits received, wages reported by the employer, and used agency guidelines (Department Exhibits 5-1 and 5-2) to determine that based upon the repeated misrepresentation of wages for more than nine weeks, that the claimant should be disqualified from benefits for the

remainder of his benefit year. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the IWD investigator presented sufficient evidence to support the administrative penalty.

The issue of whether misrepresentation will preclude Mr. Keith from future benefits is assessed independently of the already calculated overpayment/15% penalty. The claimant did not appeal the initial decision which alerted him of an overpayment and 15% penalty due to misrepresentation or fraud. If the claimant disagreed with the decision that he had engaged in misrepresentation or fraud, he had an opportunity to appeal the decision, but did not.

In this case, the claimant argued it was his first time filing for unemployment insurance benefits, yet did not read the claimant handbook containing instructions on filing claims and penalties for failure to do so. The claimant also opined that the employer, not claimant, would be the better party to report wages in connection with weekly continued claims. The claimant had no explanation for why on seven weeks he reported zero wages when he in fact performed work. The administrative law judge was not persuaded by the claimant's position, and it does not mitigate the facts surrounding the established overpayment, which were that the claimant willfully omitted his wages repeatedly, in excess of nine weeks, when he made claims for unemployment insurance benefits. By omitting or reducing the amount of wages earned, the claimant was able to receive unemployment insurance benefits for which he was not entitled. This conduct constitutes fraud.

Therefore, based on the credible evidence presented, the administrative law judge concludes Mr. Keith made false statements or misrepresentations, acting with deliberate ignorance or reckless disregard for the requirement or prohibition involved, and likewise failed to disclose material facts, with the intent to defraud by obtaining benefits he was not entitled to, when failing to report his employment and earnings with his employer. The imposition of the administrative penalty was therefore proper: The claimant is ineligible to receive unemployment insurance benefits from January 6, 2019 through December 14, 2019, because he made false and fraudulent statements.

DECISION:

The January 10, 2019, (reference 01) unemployment insurance decision is affirmed. IWD correctly imposed the administrative penalty due to the claimant's misrepresentation. The claimant is ineligible to receive unemployment insurance benefits from January 6, 2019 through December 14, 2019, because he made false statements.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn