

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ROBYNNE B HAYES
Claimant

APPEAL NO. 21A-UI-04003-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 03/22/20
Claimant: Appellant (4)

Iowa Code § 96.5(8) – Administrative Penalty
Iowa Code § 96.16(4) – Offenses and Misrepresentation
Iowa Code § 96.3(7) - Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

On January 27, 2021, Robynne Hayes (claimant/appellant) appealed the January 19, 2021 (reference 01) decision that concluded the claimant was overpaid unemployment insurance benefits in the amount of \$12,262.00 for the 29-week period between March 22 and October 10, 2020 because she failed to properly report wages and imposed a 15 percent penalty due to misrepresentation.

A telephone hearing was held on April 2, 2021, pursuant to due notice. Claimant participated personally. The Department participated by Investigator Seth Jones.

Department's exhibits 1, 2, 8, 9, and 10 were admitted. The administrative law judge took official notice of the administrative record.

ISSUE:

Was the claimant overpaid regular, state unemployment insurance benefits?

Was a penalty properly imposed?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The unemployment insurance system shows claimant has received regular, state unemployment insurance benefits totaling \$12,506.00 from the benefit week ending March 28, 2020 through the benefit week ending October 10, 2020. Claimant's weekly benefit amount was \$481.00. Claimant reported earning wages less than her weekly benefit amount plus \$15.00 in the benefit weeks ending March 28 through May 23, 2020. Claimant reporting earning no wages from the benefit week ending May 30, 2020 through December 19, 2020.

Wage records provided by claimant's employer show she was consistently working 40 hours per week for employer and earning well beyond her weekly benefit amount of \$481.00 plus \$15.00 during these weeks. Those records do indicate claimant earned less than her weekly benefit amount plus \$15.00 in the benefit weeks ending May 23 and June 20, 2020, and as such was eligible for benefits in the amount of \$120.00 and \$124.00 in those weeks, respectively. The overpayment amount was calculated as \$12,262.00 rather than the full amount paid of \$12,506.00 for this reason.

Claimant was not reporting her wages as required because she believed her claim for benefits related solely to her self-employment work as a cleaner. Claimant's self-employed cleaning work declined significantly due to the pandemic, and she filed a claim for benefits for this reason. Claimant did not review the claimant handbook or inquire as to whether she must report all wages earned during each week filed.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the January 19, 2021 (reference 01) decision that concluded the claimant was overpaid unemployment insurance benefits in the amount of \$12,262.00 for the 29-week period between March 22 and October 10, 2020 because she failed to properly report wages and imposed a 15 percent penalty due to misrepresentation is MODIFIED in favor of appellant.

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.

Iowa Code section 96.5(8) provides:

8. 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.

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.

"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 Admin. Code r. 871- 25.1.

The administrative law judge finds claimant was overpaid benefits in the amount of \$12,262.00 for the period between March 22 and October 10, 2020, based on a failure to report wages earned. Because claimant received benefits in the amount of \$12,262.00 which she was subsequently determined to be ineligible for, claimant has been overpaid benefits in that amount. Benefits shall be recovered, 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.

However, the administrative law judge finds the 15 percent penalty due to fraud was not properly assessed. The administrative law judge finds claimant's failure to properly report wages earned when filing each week was not an intentional nondisclosure or misrepresentation but was instead due to negligence and/or inadvertency. The evidence does not establish that claimant had any intent to defraud the department. Therefore, while claimant is required to repay the overpayment amount, the 15 percent surcharge is not imposed.

DECISION:

The January 19, 2021 (reference 01) decision that concluded the claimant was overpaid unemployment insurance benefits in the amount of \$12,262.00 for the 29-week period between March 22 and October 10, 2020 because she failed to properly report wages and imposed a 15 percent penalty due to misrepresentation is MODIFIED in favor of appellant.

Claimant has been overpaid benefits in the amount of \$12,262.00. Benefits shall be recovered, 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. However, no penalty due to misrepresentation shall be imposed.



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

April 12, 2021
Decision Dated and Mailed

abd/lj

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are 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.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.