

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

KELLY E WALGREN
Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**APPEAL 22A-UI-18611-AR-T
ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/12/20
Claimant: Appellant (2)**

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 November 2, 2022, the claimant filed an appeal from the October 24, 2022, (reference 03) unemployment insurance decision that determined claimant was overpaid regular unemployment insurance benefits funded by the State of Iowa in the amount of \$1,488.00 for the four-week period between February 7, 2021, and March 6, 2021, because claimant failed to report wages earned with Allworth Contracting. Iowa Workforce Development (IWD) imposed a 15% administrative penalty due to misrepresentation. The parties were properly notified about the hearing. A telephone hearing was held on December 1, 2022. Appeal numbers 22A-UI-18611-AR-T, 22A-UI-18612-AR-T, and 22A-UI-19614-AR-T were heard together and created one record. Claimant, Kelly E. Walgren, participated personally. IWD did not participate. Claimant's Exhibit A was admitted. The administrative law judge took official notice of the administrative record.

ISSUES:

Did IWD correctly determine that claimant was overpaid regular unemployment insurance benefits and was the overpayment amount correctly calculated?
Did IWD properly impose a penalty based on claimant's misrepresentation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant has worked for the employer for more than five years. As of the date of his unemployment appeal hearing, he was still employed with the employer, but had not worked for a period.

Claimant filed a claim for unemployment insurance benefits with an effective date of April 12, 2020. His weekly benefit amount was \$393.00 based on the wages reported in the base period. The weeks at issue here are from February 7, 2021, through March 6, 2021. During those weeks, claimant filed for and received a gross benefit amount of \$1,488.00. Claimant also received Federal Pandemic Unemployment Compensation (FPUC) benefits for the weeks between February 14, 2021, and March 6, 2021, in the gross amount of \$900.00.

IWD conducted a wage inquiry, and requested wage records from the employer, Allworth Contracting. The employer reported that, for the four weeks at issue, claimant received wages in excess of his weekly benefit amount, plus \$15.00. IWD then issued an overpayment decision stating that claimant had been overpaid. IWD also imposed a 15% administrative penalty for misrepresentation. However, claimant is unaware of any investigation into the alleged misrepresentation. He was not contacted by IWD prior to receiving the letter stating he was overpaid. Claimant denies engaging in misrepresentation. He attempted to answer the questions asked as accurately as possible at the time he filed his weekly claims.

Claimant's Exhibit A demonstrates that he did not work or earn wages during the four weeks between February 7, 2021, and March 6, 2021. The nature of the work claimant performs for his employer is somewhat seasonal in nature. Work was not offered to him for those weeks. Because he earned no wages for those weeks, he reported no wages earned during his weekly claim filing. Why the employer reported wages during those weeks is unexplained. Additionally, there is no testimony in support of the 15% penalty imposed by IWD for misrepresentation.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes claimant has not been overpaid benefits for the period in question.

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.

(b) However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment.

Iowa Admin. Code r. 871—24.18 provides:

Wage-earnings limitation. An individual who is partially unemployed may earn weekly a sum equal to the individual's weekly benefit amount plus \$15 before being disqualified for excessive earnings. If such individual earns less than the

individual's weekly benefit amount plus \$15, the formula for wage deductions shall be a sum equal to the individual's weekly benefit amount less that part of wages, payable to the individual with respect to that week and rounded to the lower multiple of one dollar, in excess of one-fourth of the individual's weekly benefit amount.

This rule is intended to implement Iowa Code sections 96.3, 96.4 and 96.1A(37).

The evidence in the record indicates that claimant did not work or earn wages during the four-week period in question. Accordingly, he was entitled to his full weekly benefit amount. He was not overpaid. IWD's calculation of claimant's overpayment amount is in error.

The next question is whether the administrative penalty for misrepresentation was properly imposed. Because claimant has demonstrated that he answered truthfully when he reported no wages earned for the four weeks at issue, and because claimant has not been overpaid, the 15% penalty was improperly imposed.

Iowa Code section 96.16(4)(a) provides:

Offenses

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.

Iowa Admin. Code r. 871—25.1 provides:

Definitions.

"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.

Claimant has demonstrated that he responded truthfully when he reported no wages for the four weeks at issue. In addition, the administrative law judge has concluded that claimant was entitled to the unemployment insurance benefits he received for the weeks at issue. For those reasons, the 15% penalty was improperly imposed.

DECISION:

The October 24, 2022, (reference 03) unemployment insurance decision is REVERSED. The claimant has not been overpaid unemployment insurance benefits in the amount of \$1,488.00. The claimant has not engaged in misrepresentation and the 15% penalty was not properly imposed.



Alexis D. Rowe
Administrative Law Judge

December 5, 2022
Decision Dated and Mailed

ar/mh

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.