

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

**RODOLFO V CISCATO**  
Claimant

**APPEAL NO. 22A-UI-18236-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 04/19/20**  
**Claimant: Appellant (2)**

Iowa Code §§ 96.16(4), 96.5(8) & (13) – Misrepresentation & Fraud Administrative Penalties

**STATEMENT OF THE CASE:**

On October 22, 2022, Rodolfo Ciscato (claimant) filed a timely appeal from the October 12, 2022 (reference 05) decision that held the claimant was ineligible for unemployment insurance benefits due to an unpaid fraud overpayment balance. The decision held the claimant must repay the entire fraud overpayment balance, including penalty, interest and lien fees before he could be considered for additional unemployment insurance benefits and that Iowa unemployment insurance benefits could not be used to off-set the overpayment. After due notice was issued, the appeal hearing began on November 14, 2022. The hearing concluded on December 1, 2022. The claimant participated on both dates. Kara Harrison, Investigator II with Iowa Workforce Development Investigations and Recovery Unit, represented Iowa Workforce Development on both dates. There were five appeal numbers set for a consolidated hearing: 22A-UI-18232-JT-T, 22A-UI-18233-JT-T, 22A-UI-18234-JT-T, 22A-UI-18235-JT-T and 22A-UI-18236-JT-T. IWD Exhibits A1 through D1 and claimant Exhibits 1, 2 and 3 were received into evidence at the time of the hearing. The administrative law judge requested the claimant's 2020 income tax return, which the claimant provided and which was received into evidence as Exhibit 4. The administrative law judge took official notice of the following Agency administrative records: DBIN, KPYX, and WAGE-B.

**ISSUES:**

Whether the claimant is barred from receiving unemployment insurance benefits due to an outstanding fraud overpayment.

**FINDINGS OF FACT:**

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

The claimant has outstanding, unpaid overpayments that include an overpayment of regular benefits, PEUC benefits, FPUC benefits, and LWAP benefits. None of the overpayment amounts involved fraud or misrepresentation on the part of the claimant. See Appeal Numbers 22A-UI-18232-JT-T, 22A-UI-18233-JT-T, 22A-UI-18234-JT-T and 22A-UI-18235-JT-T.

## REASONING AND CONCLUSIONS OF LAW:

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

### 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.

[*Emphasis added*]

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.

[*Emphasis added.*]

Iowa Code section 96.5(8) provides:

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 96.5(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.

As determined in Appeal Numbers 22A-UI-18232-JT-T, 22A-UI-18233-JT-T, 22A-UI-18234-JT-T and 22A-UI-18235-JT-T, the claimant did not omit or underreport wages. Rather, the Iowa Workforce Development weekly claims system did not solicit wage information and, further, prevented the claimant from reporting wage information. Because there no fraud or misrepresentation, the administrative penalties set forth at Iowa Code section 96.5(8) and (13) do not apply.

**DECISION:**

The from the October 12, 2022 (reference 05) decision is REVERSED. As determined in Appeal Numbers 22A-UI-18232-JT-T, 22A-UI-18233-JT-T, 22A-UI-18234-JT-T and 22A-UI-18235-JT-T, the benefit overpayments are not the result of fraud or misrepresentation. Because there was no fraud or misrepresentation, the administrative penalties set forth at Iowa Code section 96.5(8) and 96.5(13) do not apply.



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James E. Timberland  
Administrative Law Judge

December 12, 2022  
Decision Dated and Mailed

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**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  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://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>.

**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](http://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 está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

**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.