

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JONATHAN L WILLIAMS
Claimant

APPEAL 17A-UI-11381-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 12/04/16
Claimant: Appellant (1)**

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 filed an appeal from the November 2, 2017 (reference 02) Iowa Workforce Development (“IWD”) unemployment insurance decision that found claimant was overpaid unemployment insurance benefits because claimant failed to report earnings from Alberici Constructors, Inc. between March 12, 2017 and April 29, 2017. IWD imposed a 15% administrative penalty due to misrepresentation. The parties were properly notified of the hearing. A telephone hearing was held on November 29, 2017. The claimant, Jonathan L. Williams, participated personally. Kendra Mills participated on behalf of IWD. IWD Exhibits 1-7 were admitted. The administrative law judge took official notice of the claimant’s unemployment insurance benefits records.

ISSUES:

Did IWD correctly determine that claimant was overpaid unemployment insurance benefits and was the overpayment amount correctly calculated?
Did IWD properly impose a penalty based upon 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 December 4, 2016. IWD conducted an audit and discovered that claimant received wages from Alberici Constructors, Inc. from March 12, 2017 through April 29, 2017, but failed to report the wages. IWD completed a recheck with the employer to verify the claimant’s wages. See Exhibit 2 and 3.

The following chart illustrates the wages reported by claimant when filing his weekly continued claim for benefits, the amount of gross wages he received each week when filing his weekly continued claim for benefits, the amount of unemployment insurance benefits that claimant was

paid each week he filed his weekly continued claim for benefits, and resulting overpayment amount:

WEEK ENDING	WAGES EARNED	UI BENEFITS PAID	UI BENEFITS ENTITLED	OVERPAYMENT OF BENEFITS
03/18/17	\$1,203.00	\$548.00	\$0.00	\$548.00
03/25/17	\$1,337.00	\$548.00	\$0.00	\$548.00
04/01/17	\$1,371.00	\$548.00	\$0.00	\$548.00
04/08/17	\$1,571.00	\$548.00	\$0.00	\$548.00
04/15/17	\$2,725.00	\$548.00	\$0.00	\$548.00
04/22/17	\$2,006.00	\$548.00	\$0.00	\$548.00
04/29/17	\$785.00	\$548.00	\$0.00	\$548.00
			TOTAL	\$3,836.00

Claimant's reason for failing to report wages during this period was because his wife was actually claiming benefits for him each week. Claimant had given his wife his personal identification number ("PIN") because he was not good with computers. He instructed her to file his initial claim for benefits as well as his continued weekly claims for benefits. Claimant never told his wife to stop claiming benefits. Claimant received benefits for the weeks he claimed where he was actually employed and ineligible for benefits. Claimant does not dispute the overpayment amount but argues that a penalty should not be imposed because his wife filed the continued weekly claims for benefits rather than him. The unemployment insurance benefits handbook specifically states: "Individuals must keep their PIN confidential and should never let anyone file their weekly claim on their behalf." See Exhibit 7.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes IWD did correctly calculate the claimant's overpayment of benefits and did correctly impose a 15% penalty due to claimant's misrepresentation.

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 96.16(4)(a) 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, in the discretion of the department, either be liable to have the sum deducted from any future benefits payable to the individual under this chapter or 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— 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.

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.* Ms. Mills' testimony was corroborated by documentation regarding wages earned that were reported by the claimant's employer. Claimant did not dispute that he earned the wages reported by his employer from March 12, 2017 through April 29, 2017. The overpayment amount of \$3,836.00 is correct.

Claimant argues that he should not be penalized because his wife was filing weekly continued claims rather than himself. This argument is without merit. Claimant was the person who shared his confidential PIN information with his wife. Claimant's wife was acting as his agent when he instructed her to file weekly continued claims. Claimant is responsible for ensuring that his weekly continued claims report true and accurate information. Further, claimant entrusted his wife to have sole access to the unemployment insurance benefits card that funds were deposited to, thus creating a situation where he could not check to see if funds were being deposited. Claimant created an agency relationship with his wife when he instructed her to file claims on his behalf and gave her the PIN to do so. This means that, as the principal, he is bound by his agent's actions.

Claimant knowingly omitted material information to IWD when he failed to correctly report his wages earned from Alberici Constructors, Inc. This is an intentional concealment of wages that led to claimant receiving an overpayment of unemployment insurance benefits. The penalty of 15% of the amount of the fraudulent overpayment was correctly assessed by IWD.

DECISION:

The November 2, 2017 (reference 02) unemployment insurance decision is affirmed. The claimant is overpaid benefits of \$3,836.00. IWD correctly imposed the administrative penalty of 15% due to the claimant's misrepresentation.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs