

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

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**LORRIE K GRAVES**  
Claimant

**APPEAL 22A-UI-16948-SN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 05/10/20  
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  
PL 116-136, Sec. 2107 – Pandemic Emergency Unemployment Compensation

**STATEMENT OF THE CASE:**

On September 9, 2022, the claimant/appellant, Lorrie Graves, filed an appeal from the September 2, 2022 (reference 02) unemployment insurance decision which concluded the claimant was overpaid unemployment insurance benefits because she failed to accurately report earnings while receiving unemployment insurance benefits. Iowa Workforce Development (IWD) also imposed a 15% administrative penalty due to misrepresentation.

The parties were properly notified of the hearing. A telephone hearing was held on October 6, 2022. This appeal was heard jointly with 22A-UI-16947-SN-T, 22A-UI-16952-SN-T, and 22A-UI-16953-SN-T. The claimant participated. Elizabeth Volious, Investigator, participated on behalf of IWD. IWD Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 were admitted into the record.

**ISSUES:**

Was claimant overpaid unemployment insurance benefits?  
Were the penalties properly imposed?

**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 May 10, 2020. The claimant's weekly benefit amount is \$245.00. The claimant's application for benefits stated the last date she worked was May 4, 2020. She specified that her reason for leaving employment was due to a "layoff... lack of work." (Exhibit 4-2)

When the claim was established, the claimant agreed to read the Unemployment Insurance Handbook. The Unemployment Insurance Handbook includes instructions for properly filing claims and informs claimants that failure to follow the instructions could result in a denial or overpayment of benefits. The handbook also informs claimants that they should call IWD customer service for help if they don't understand the information in the handbook.

With respect to "Reporting Earnings," the handbook states:

Gross earnings or gross wages are your earnings before taxes or other payroll deductions are made. Earnings or wages must be reported on the weekly claim during the week the wages are earned, not when the wages are paid. Earnings must be reported even if the payment has not been received yet. To calculate the amount to report, the individual should multiply the number of hours worked by the hourly wage. Individuals should report the full gross amount of earnings and IWD will calculate any deductions. If an individual earns \$15 or more over their WBA, they will not receive a benefit payment.

The handbook also provides in part:

**Preparing to File a Weekly Claim**

Individuals should have the following information available when filing their weekly claim:

- SSN
- PIN
- Total amount of gross wages (before deductions) earned during the week
- Total amount of gross holiday pay, gross vacation and severance, if applicable

To calculate gross earnings, multiply the number of hour worked (Sunday through Saturday) times the rate of pay. Example: 10 hours X \$12.00/hour = \$120.00 in gross earnings

In addition, each week the claimant would complete a weekly continued claim, she would see a screen online which provided:

It is important that you answer all questions truthfully.

**WARNING:** Attempting to claim and receive unemployment insurance benefits by entering false information can result in loss of benefits, fines and imprisonment.

Before completing her weekly continued claim each week, the claimant had to check a box that stated she understood the warning message above and wished to proceed

When filing a weekly claim, the claimant read the following prompt, "You must file your weekly claim each week to receive payment. The first day of the week you can report a weekly claim is the Sunday starting at 8 a.m. after the prior week has ended." The first question the claim form asks after this prompt is, "Did you work during the week of [day of week, day of month] through [day of week, day of month]," for each week of the weekly claim. (Department Exhibit 11-2). If a claimant answers they have not worked, then the mainframe records a zero entry.

The record reflects the claimant answered this question that she did not work during the preceding week for each of her weekly claims. During the hearing, the claimant acknowledged that she worked for each of these weeks. The claimant was unable to explain why she reported that she was not working when she was. The claimant also testified she was unaware that she could be eligible for partial unemployment.

Finally, before submitting her weekly claim filing, claimant was required to review the information entered and answer the following question:

The laws impose penalties for false statements. Do you certify the information you have provided is true for the week ending Saturday, .....

On April 13, 2022, Iowa Workforce Development discovered a discrepancy between what the claimant had reported and what it had received in quarterly wage reports from the employer, Big Tap Productions.

On April 13, 2022, IWD contacted Big Tap Productions to verify the claimant's wages earned during the period in question. The employer provided wage reports for the period in question.

On April 21, 2021, Ann Marie Babcock provided the employer's responses to Ms. Volious' request to attest to the claimant's earnings from

On August 29, 2022, Ms. Volious mailed the claimant a preliminary audit, which stated she may have been overpaid regular unemployment insurance, Pandemic Emergency Unemployment Insurance (PEUC), and Federal Pandemic Unemployment Compensation (FPUC) benefits for a combined amount of \$8,052.00, for failing to accurately report wages (Exhibit 3). The letter also informed claimant that an overpayment may result in consequences including a 15% penalty (Exhibit 3).

The claimant did not respond to the preliminary audit notice despite receiving it.

Because the claimant did not accurately report her wages, an overpayment of \$4,727.00 was determined by IWD. The agency established the overpayment based upon the following incorrect payments made to the claimant:

WEEK ENDING	WAGES REPORTED	WAGES EARNED	BENEFIT S PAID	BENEFIT S ENTITLED	OVERPAYMENT
11/07/20	\$00.00	\$150.00	\$245.00	\$156.00	\$89.00
11/14/20	\$00.00	\$150.00	\$245.00	\$156.00	\$89.00
11/21/20	\$00.00	\$150.00	\$245.00	\$156.00	\$89.00
11/28/20	\$00.00	\$150.00	\$245.00	\$156.00	\$89.00
12/05/20	\$00.00	\$200.00	\$245.00	\$106.00	\$139.00
12/12/20	\$00.00	\$200.00	\$245.00	\$106.00	\$139.00
12/19/20	\$00.00	\$200.00	\$245.00	\$106.00	\$139.00
12/26/20	\$00.00	\$200.00	\$245.00	\$106.00	\$139.00
01/02/21	\$00.00	\$250.00	\$245.00	\$56.00	\$189.00
01/09/21	\$00.00	\$250.00	\$245.00	\$56.00	\$189.00
01/16/21	\$00.00	\$250.00	\$245.00	\$56.00	\$189.00
01/23/21	\$00.00	\$250.00	\$245.00	\$56.00	\$189.00
01/30/21	\$00.00	\$250.00	\$245.00	\$56.00	\$189.00
02/06/21	\$00.00	\$250.00	\$245.00	\$56.00	\$189.00
02/13/21	\$00.00	\$250.00	\$245.00	\$56.00	\$189.00
02/20/21	\$00.00	\$250.00	\$245.00	\$56.00	\$189.00
02/27/21	\$00.00	\$250.00	\$245.00	\$56.00	\$189.00
03/06/21	\$00.00	\$250.00	\$245.00	\$56.00	\$189.00
03/13/21	\$00.00	\$250.00	\$245.00	\$56.00	\$189.00
03/20/21	\$00.00	\$250.00	\$245.00	\$56.00	\$189.00
03/27/21	\$00.00	\$250.00	\$245.00	\$56.00	\$189.00
04/03/21	\$00.00	\$250.00	\$245.00	\$56.00	\$189.00
04/10/21	\$00.00	\$250.00	\$245.00	\$56.00	\$189.00

04/17/21	\$00.00	\$400.00	\$245.00	\$56.00	\$189.00
04/24/21	\$00.00	\$400.00	\$245.00	\$56.00	\$189.00
05/01/21	\$00.00	\$350.00	\$245.00	\$56.00	\$189.00
05/08/21	\$00.00	\$350.00	\$245.00	\$56.00	\$189.00
			<b>SUBTOTAL:</b>		\$4,727.00 (OP)
			<b>15% Penalty</b>	\$709.05	\$709.05 (imposed)
			<b>TOTAL</b>		\$5,436.05

In addition to the overpayment, a 15% penalty was imposed, due to the overpayment arising from the claimant's misrepresentation or intentional omission of wages to collect benefits. The claimant does not dispute the overpayment amount but argued that a penalty should not be imposed because she was confused about what was required when reporting wages on her weekly claims.

### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes IWD did correctly establish and calculate the claimant's overpayment of benefits. The administrative law judge further finds the 15% penalty was appropriately imposed.

The first issue is whether the claimant has been overpaid benefits.

Iowa Code § 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Code § 96.19(38) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

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.

Here, claimant collected both wages and unemployment insurance benefits during each week specified in the table in the findings of fact above. The claimant falsely reported she was not working at all which resulted in her reporting zero in earnings for each week. As a result, the claimant was overpaid benefits in the amount of \$4,727.00, to which she was not entitled. The administrative law judge concludes the overpayment was correctly calculated.

**The next issue is whether the imposition of a 15% penalty due to fraud or misrepresentation was warranted.**

The Department is authorized to impose an administrative penalty when it determines that a claimant has within the thirty-six preceding calendar months, willfully and knowing failed to disclose a material fact with the intent to obtain unemployment benefits to which the individual is not entitled. Iowa Code section 96.5(8).

Iowa Code section 96.16(4)(a) and (b) provide in part:

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.

PL 116-136 Sec 2107 provides in pertinent part:

PANDEMIC EMERGENCY UNEMPLOYMENT COMPENSATION.

(2) PROVISIONS OF AGREEMENT. —

Any agreement under paragraph (1) shall provide that the State agency of the State will make payments of pandemic emergency unemployment compensation to individuals who—

(A) have exhausted all rights to regular compensation under the State law or under Federal law with respect to a benefit year (excluding any benefit year that ended before July 1, 2019);

(B) have no rights to regular compensation with respect to a week under such law or any other State unemployment compensation law or to compensation under any other Federal law;

(C) are not receiving compensation with respect to such week under the unemployment compensation law of Canada; and

(D) are able to work, available to work, and actively seeking work.

...

(e) Fraud and Overpayments

**(1) In General. If an individual knowingly has made or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received an amount of Pandemic Emergency Unemployment Compensation to which such individual was not entitled, such individual**

**a. Shall be ineligible for further Pandemic Emergency Unemployment Compensation in accordance with the provisions of the applicable state unemployment compensation law relating to fraud in connection with a claim for unemployment compensation; and**

**b. Shall be subject to prosecution under section 1001 of title 18, United States Code.**

(2) Repayment.--In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled,

the State shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation to the State agency...

“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. Iowa Admin. Code r. 871-25.1.

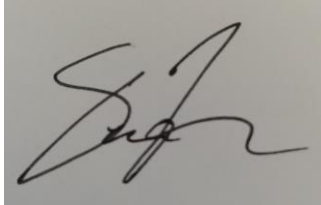
“Misrepresentation” means to give misleading or deceiving information to or omit material information; to present or represent in a manner at odds with the truth. Iowa Admin. Code r. 871-25.1

Based on the evidence presented, the administrative law judge concludes the claimant knowingly stated she was not working, to receive benefits. The administrative law judge makes this finding because the claimant stated she did not know she could be eligible and still be working.

The administrative law judge concludes the calculated overpayment was correct, and the claimant knowingly omitted material information to IWD when she failed to correctly report wages earned for the weeks between November 17, 2020 through May 8, 2021, and concurrently filed for and received unemployment insurance benefits. Accordingly, the administrative law judge concludes the overpayment was correctly calculated and the application of a 15% penalty due to misrepresentation was warranted.

**DECISION:**

The September 2, 2022 (reference 02) unemployment insurance decision is AFFIRMED. The claimant was overpaid \$4,727.00 in PEUC benefits. IWD correctly imposed the administrative penalty of fifteen percent due to the claimant's misrepresentation that she was not working when she was.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is shown on a light gray background.

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Sean M. Nelson  
Administrative Law Judge II  
Iowa Department of Inspections & Appeals  
Administrative Hearings Division – UI Appeals Bureau

October 19, 2022  
Decision Dated and Mailed

smn/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  
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> 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.