

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

TRAVIS J KRAMER
Claimant

LEGAL AID
Employer

APPEAL 23A-UI-04356-PT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (4)

Iowa Code § 96.3(7) – Overpayment of Benefits
Iowa Code § 96.16(4) – Offenses and Misrepresentation
Iowa Code § 96.5(8) – Administrative Penalty
Iowa Admin. Code r. 871—25.1 – Misrepresentation & Fraud

STATEMENT OF THE CASE:

Claimant filed an appeal from the April 26, 2023 (reference 10) unemployment insurance decision which modified the overpayment amount determined in the April 6, 2023 (reference 06) decision and held the claimant was overpaid unemployment insurance benefits because he failed to accurately report earnings while concurrently filing weekly claims for 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 hearing was held at the IowaWORKS Center in Cedar Rapids, Iowa on May 25, 2023. Appeal numbers 23A-UI-03913-PT, 23A-UI-03914-PT, 23A-UI-03915-PT, 23A-UI-03916-PT, and 23A-UI-04356-PT were heard together and created one record. Claimant, Travis J. Kramer, participated personally and was represented by Attorney Morgan Fritz. IWD was represented by Attorney Jeffrey Koncsol and participated through Investigator II Debbie Rumbaugh. IWD Exhibits 1 through 8 were admitted into the record. Claimant's exhibits A and B were admitted into the record. The administrative law judge took official notice of the administrative record.

ISSUES:

Did IWD correctly determine that the claimant was overpaid unemployment insurance benefits, and was the overpayment amount correctly calculated?
Did IWD properly impose a penalty based upon the 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 March 29, 2020. Claimant's weekly benefit amount was \$314.00.

Even though all claimants who file a claim online are offered and agree to read the Unemployment Insurance Handbook, claimant did not do so. 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 do not 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.

With respect to "Partially deductible from the benefit payment based on a formula," the handbook states:

You may earn up to 25 percent of your WBA before the benefit payment is reduced, but there is still a requirement to report all earnings even if under 25 percent. Earnings higher than 25 percent will reduce your benefit payment. If you earn \$15 or more over your WBA, you will not receive a benefit payment for that week. This type of income includes:

- Wages
- Holiday pay
- Sick leave
- Stand-by pay
- Tips, gratuities, commission and incentive pay
- Strike pay - only deductible when received for services rendered.
- Any compensation other than cash (i.e. room and board, cell phone)

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 online, he 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.

In March 2020, claimant worked for Dee Electronics Inc. (employer). Claimant worked as an assembly team lead-worker. Claimant's hours were affected by the COVID-19 pandemic. From April 5 2020, through May 23, 2020, claimant did not work, but received "COVID pay" from the employer. On May 24, 2020, claimant returned to work, but worked irregular, part-time hours. Claimant worked part-time until September 13, 2020, when claimant returned to work full-time.

In March, April, and May 2020, claimant earned \$13.00 per hour. From June 1, 2020, through July 2020, claimant earned \$14.33 per hour. From August 2020, to the end of the period at issue, claimant earned \$19.00 per hour.

As a result of a wage crossmatch, IWD conducted an audit and discovered that claimant received wages from the employer between March 29, 2020, and January 16, 2021, but claimant reported significantly different amounts than the employer did. IWD contacted the employer to verify claimant's wages earned during that period. The employer confirmed the hours claimant performed work and was paid wages during the weeks between March 29, 2020, and January 16, 2021. The audit indicated that claimant was overpaid unemployment insurance benefits most weeks because the amount he actually earned altered the amounts he was eligible to receive.

After reviewing the employer's verification of wages, Rumbaugh notified claimant of an investigation and scheduled an interview. Claimant participated in the interview. Claimant does not dispute the amounts the employer reported. Claimant told Rumbaugh that he attempted to base the amount reported each week on the hours he worked, but he did not keep a close record of his hours worked. Additionally, claimant explained that when calculating his wages, he mistakenly subtracted his child support payments from his estimated earnings each week and then reported to IWD the remaining estimated earnings. Claimant testified that he did seek clarification from IWD about how to report his income, but he could not recall what information IWD provided him or whether he eventually stopped subtracting his child support payments from his reported wages. Claimant testified that he has a difficult relationship with money, in general, and that he sought help filing his weekly claims from his mother and girlfriend.

Because claimant did not accurately report his wages, an overpayment of \$3,230.00 in regular state unemployment insurance benefits for 19 weeks between March 29, 2020, and January 16, 2021, was determined by IWD. The agency established the overpayment based upon the incorrect payments made to the claimant:

| WEEK ENDING | WAGES REPORTED | WAGES EARNED | BENEFITS PAID | BENEFITS ENTITLED | UNDERPAYMENT | OVERPAYMENT |
|----------------|-------------------|-----------------|------------------|----------------------|--------------|-------------|
| 04/04/20 | 308.00 | 419.00 | 84.00 | 0 | 0 | 84.00 |
| 04/11/20 | 300.00 | 520.00 | 92.00 | 0 | 0 | 92.00 |
| 04/18/20 | 0.00 | 485.00 | 314.00 | 0 | 0 | 314.00 |
| 04/25/20 | 300.00 | 348.00 | 92.00 | 0 | 0 | 92.00 |
| 05/02/20 | 0.00 | 348.00 | 314.00 | 0 | 0 | 314.00 |
| 05/09/20 | 0.00 | 348.00 | 314.00 | 0 | 0 | 314.00 |
| 05/16/20 | 300.00 | 348.00 | 92.00 | 0 | 0 | 92.00 |
| 05/23/20 | 150.00 | 348.00 | 242.00 | 0 | 0 | 242.00 |
| 05/30/20 | 150.00 | 382.00 | 242.00 | 0 | 0 | 242.00 |
| 06/06/20 | 166.00 | 348.00 | 226.00 | 0 | 0 | 226.00 |

| | | | | | | |
|----------|--------|--------|-----------------|--------|---------------|-----------------|
| 06/13/20 | 395.00 | 420.00 | 0.00 | 0 | 0 | |
| 06/20/20 | 208.00 | 421.00 | 184.00 | 0 | 0 | 184.00 |
| 06/27/20 | 208.00 | 417.00 | 184.00 | 0 | 0 | 184.00 |
| 07/04/20 | 208.00 | 313.00 | 184.00 | 79.00 | 0 | 105.00 |
| 07/11/20 | 208.00 | 436.00 | 184.00 | 0 | 0 | 184.00 |
| 07/18/20 | 208.00 | 208.00 | 184.00 | 184.00 | 0 | |
| 07/25/20 | 208.00 | 208.00 | 184.00 | 184.00 | 0 | |
| 08/01/20 | 208.00 | 114.00 | 184.00 | 278.00 | 94.00 | |
| 08/08/20 | 208.00 | 343.00 | 184.00 | 0 | 0 | 184.00 |
| 08/15/20 | 208.00 | 229.00 | 184.00 | 163.00 | 0 | 21.00 |
| 08/22/20 | 208.00 | 229.00 | 184.00 | 163.00 | 0 | 21.00 |
| 08/29/20 | 208.00 | 150.00 | 184.00 | 242.00 | 58.00 | |
| 09/05/20 | 208.00 | 229.00 | 184.00 | 163.00 | 0 | 21.00 |
| 09/12/20 | 208.00 | 114.00 | 184.00 | 278.00 | 94.00 | |
| | | | | | | |
| 01/16/21 | 0.00 | 619.00 | 314.00 | 0 | 0 | 314.00 |
| 01/23/21 | 0.00 | 0.00 | 314.00 | 314.00 | 0 | |
| | | | SUBTOTAL | | 246.00 | 3,230.00 |

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.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes IWD did correctly establish claimant was overpaid benefits. However, the total amount of the overpayment was not correctly calculated.

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.

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.

Under Iowa law a claimant is considered partially unemployed in any week when employed in their regular job the individual works less than their regular full-time week and earns less than the individual's weekly benefit amount plus fifteen dollars. See Iowa Code § 96.19(38)(b)(1).

When a claimant is partially employed and filing for unemployment benefits a claimant cannot earn wages, bonus pay, holiday pay, and or vacation pay that is more than their weekly benefit amount plus \$15.00. See Iowa Admin. Code r. 871—24.18.

In fifteen of the weeks between March 29, 2020, and January 16, 2021, claimant worked and earned wages in excess of his weekly benefit amount plus \$15.00, which rendered him ineligible for benefits. Claimant incorrectly reported his earnings, and, as a result, was overpaid each of these weeks. Claimant received a gross total of \$3,062.00 in state unemployment benefits during these fifteen weeks.

In nine of the weeks between March 29, 2020, and January 16, 2021, claimant worked but earned less than \$329.00 (his weekly benefit amount of \$314.00 plus \$15.00). Therefore, claimant was entitled to partial benefit payments according to the following formula:

$$\begin{aligned} \$ (\text{wages}) - \$ (25\% \text{ of WBA}) &= \$ (\text{wage deduction}) \\ \$ (\text{WBA}) - \$ (\text{wage deduction}) &= \$ (\text{partial weekly benefit amount}). \end{aligned}$$

For the weeks ending July 4, August 15, August 22, and September 5, 2020, claimant earned more in wages than he reported when filing his weekly claim for those weeks and, as a result, was overpaid each of those weeks. The administrative law judge agrees with the investigator's calculations for each of these weeks as listed in the findings of fact. Claimant was overpaid state unemployment benefits in the amount of \$168.00 during these four weeks.

For the weeks ending July 18 and July 25, 2020, claimant accurately reported his wages earned. Therefore, there is no overpayment or underpayment for either week.

For the weeks ending August 1, August 29, and September 12, 2020, claimant earned less in wages than he reported when filing his weekly claim for those weeks and, as a result, was underpaid each of those weeks. The administrative law judge agrees with the investigator's calculations for each of those weeks as listed in the findings of fact. Claimant was underpaid state unemployment benefits in the amount of \$246.00 for these three weeks.

In total claimant was overpaid a gross total of \$3,230.00 in state unemployment benefits. Claimant was also underpaid a gross total of \$246.00 in state unemployment benefits. The administrative law judge concludes the claimant was overpaid a net total of \$2,984.00 in state unemployment benefits from March 29, 2020, through January 16, 2021.

The final question 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.

"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

Claimant credibly testified that he attempted to report his wages correctly, and that his reports were estimations based on the number of hours he worked each week after mistakenly subtracting his child support payments from his total estimated earnings. Claimant reported some amount of earnings when filing his weekly claims for all but a few weeks and for five weeks, claimant either accurately reported or over-reported his wages. The undersigned did not discern a pattern to claimant's underreporting that led to a conclusion that he was carefully calculating his under-reported amount in order to deceive IWD. Finally, the investigator did not identify any specific facts that led her to impose the penalty in claimant's case.

Therefore, the administrative law judge concludes the overpayment will be calculated to reflect the underpayment of \$246.00, yielding a net overpayment of \$2,984.00 in state unemployment benefits. The claimant did not knowingly omit material information to IWD when he failed to correctly report wages earned for the period of March 29, 2020, through January 16, 2021, and concurrently filed for unemployment insurance benefits. Accordingly, the administrative law judge concludes the overpayment will be modified in favor of the claimant. The application of a 15% penalty due to misrepresentation was not warranted and must be removed.

DECISION:

The April 26, 2023 (reference 10) unemployment insurance decision, which modified the overpayment amount determined in the April 6, 2023 (reference 06) decision, is modified in favor of the claimant/appellant. Claimant has been overpaid regular unemployment insurance benefits in the amount of \$2,984.00, and is required to repay the agency this overpayment balance. IWD improperly imposed a 15% penalty due to misrepresentation and the penalty must be removed.



Patrick B. Thomas
Administrative Law Judge

June 7, 2023
Decision Dated and Mailed

pbt/scn

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.