

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

KATIE J SEALES

Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL 22A-UI-15875-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20

Claimant: Appellant (4)

Iowa Code § 96.3(7) – Overpayment of Benefits – Lost Wages Assistance Program (LWAP)
Iowa Code § 96.16(4) – Offenses and Misrepresentation
Iowa Admin. Code r. 871—25.1 – Misrepresentation & Fraud

STATEMENT OF THE CASE:

On August 7, 2022, the claimant filed an appeal from the July 28, 2022, (reference 04) unemployment insurance decision that found claimant was overpaid Lost Wages Assistance Program (LWAP) benefits in the amount of \$1,500.00 for the five-week period between July 26, 2020, and September 5, 2020, because claimant incorrectly reported wages earned with Jethro and Jake's, Inc. 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 September 8, 2022. Appeal numbers 22A-UI-15873-AR-T, 22A-UI-15874-AR-T, and 22A-UI-16652-AR-T were heard together and created one record. Claimant, Katie J. Seales, participated personally. Investigator Tyler Lysinger participated on behalf of IWD. IWD Exhibits 1 through 7 were admitted. The administrative law judge took official notice of the administrative record.

ISSUES:

Did IWD correctly determine that claimant was overpaid LWAP 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 filed a claim for unemployment insurance benefits with an effective date of March 15, 2020. Her weekly benefit amount was \$240.00 based upon the wages reported in her base period. Claimant filed weekly continuing claims beginning the week of March 15, 2020, and continuing consecutively until January 30, 2021. She received regular unemployment insurance benefits funded by the State of Iowa in the total amount of \$6,015.74 between March 15, 2020, and January 30, 2021. The benefit weeks at issue here begin May 17, 2020. As of that date, claimant filed for and received regular unemployment insurance benefits in the gross amount of \$3,539.74. Claimant also received Federal Pandemic Unemployment Compensation (FPUC) benefits in the gross amount of \$6,900.00 for a 14-week period between May 17, 2020, and

January 30, 2021. Claimant also received Lost Wages Assistance Program (LWAP) benefits in the gross amount of **\$1,200.00** for the five-week period between July 26, 2020, and September 5, 2020. Claimant was determined to qualify for the LWAP payment for the benefit week ending August 15, 2020. IWD calculated claimant's LWAP overpayment at \$1,500.00, but the administrative record only reflects LWAP overpayments in the gross amount of \$900.00 for a three-week period in which she did not qualify to receive such payments.

IWD conducted an audit of claimant's wages and identified a potential discrepancy between the wages reported by claimant and the wages reported by the employer. IWD requested a report of wages for claimant from the employer. The report was initially returned reporting biweekly wages for claimant. IWD then sent a follow-up request for the employer to report wages by week. That follow-up wage report was returned on June 28, 2022. Lysinger reviewed the wage report and noted that the wages paid to claimant were similar to those she reported at the time of her weekly claims. However, it appeared that claimant failed to report tips paid to her. Lysinger interviewed claimant for more information. Claimant acknowledged that she likely did not report her wages accurately. She reported the money she took home each week, or the net wages, as opposed to gross wages. If claimant was paid cash tips for a shift, they were paid out at the end of the shift. If claimant was paid tips by another method, such as for shared tips, she was issued envelopes of money at irregular intervals. She was also issued paystubs at irregular intervals, though they were printed biweekly. These also reflected her tips. Claimant did not attempt to correct her weekly reported income with IWD.

The online handbook for claimants provides that "you must report all gross wages and all gross earnings on the weekly claim." It explicitly includes tips as one such type of earning claimants must report weekly. Claimant did not remember whether she read the handbook at the time that she filed her initial application. She read some "information" at the time that she filed the initial application for benefits but was unsure whether this information was the handbook.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes IWD incorrectly calculated the claimant's overpayment of LWAP benefits, and that calculation is corrected to the gross amount of \$900.00, and the 15% penalty due to misrepresentation was properly imposed.

Iowa Code section 96.3(7) provides, in pertinent part:

Payment — determination — duration — child support intercept.

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. The employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. This prohibition against relief of charges shall apply to both contributory and reimbursable employers.

(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.

It is undisputed that the claimant incorrectly reported her wages earned with Jethro and Jake's, Inc., and that had she reported her tips as instructed by the handbook, she would not have been eligible to receive unemployment insurance benefits, or LWAP benefits for the weeks at issue.

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).

On August 8, 2020, President Trump issued a memorandum to provide additional financial assistance to those individuals receiving unemployment benefits that met the eligibility requirements of the program through a grant from FEMA. The LWA program required claimants to be eligible for a weekly benefit amount of at least \$100.00 and the LWA payment was made to claimants in combination with a payment of at least \$1.00 in benefits stemming from either State of Iowa funded unemployment insurance benefits, Federal Pandemic Emergency Unemployment Compensation (PEUC) benefits program, Pandemic Unemployment Assistance (PUA) program, Extended Benefits program, Voluntary Shared Work program, Short Term Compensation program, or Trade Act benefits program. The weekly benefit amount of the LWA program was \$300.00 and it ran from July 26, 2020, through September 5, 2020. Therefore, if a claimant was not eligible for weekly benefits from an underlying program, they were not eligible for LWA benefits as a weekly supplemental benefit.

The Memorandum on Authorizing the Other Needs Assistance Program for Major Disaster Declarations Related to Coronavirus Disease 2019 provided in pertinent part:

Sec 4. Assistance Program for Lost Wages.

(a) For purposes of this memorandum, "State" includes the territories and the District of Columbia, and "Governor" includes the chief executive thereof.

(b) To help meet the needs of the American people during this unprecedented and continuously evolving public health crisis, the Secretary of Homeland Security (Secretary), acting through the FEMA Administrator, is authorized to make available other needs assistance for lost wages, in accordance with section 408(e)(2) of the Stafford Act (42 U.S.C. 5174(e)(2) ("lost wages assistance"), to the people of a State, including the members of any tribe residing therein, if the Governor requests lost wages assistance and agrees to administer delivery and provide adequate oversight of the program, for a major disaster I declared pursuant to section 401 of the Stafford Act (42 U.S.C. 5170) for COVID-19, under the following conditions:

(i) the Governor requests from the FEMA Administrator a grant for lost wages assistance pursuant to 42 U.S.C. 5174(f)(1)(A) and agrees to the cost-sharing requirement of 42 U.S.C. 5174(g)(2); and

(ii) the Governor administers delivery of financial assistance for lost wages in conjunction with the State's unemployment insurance system.

(c) In exercising this authority, the Secretary, acting through the FEMA Administrator, shall, subject to the limitations above, approve a lost wages assistance program that authorizes the Governor to provide a \$400 payment per week, which shall reflect a \$300 Federal contribution, to eligible claimants from the week of unemployment ending August 1, 2020.

(d) For purposes of this memorandum, the term "Eligible claimants" means claimants who:

(i) receive, for the week lost wages assistance is sought, at least \$100 per week of any of the following benefits:

(A) Unemployment compensation, including Unemployment Compensation for Federal Employees (UCFE) and Unemployment Compensation for Ex-Service members (UCX), under section 8501 of title 5, United States Code;

(B) Pandemic Emergency Unemployment Compensation (PEUC), under section 2107 of the CARES Act;

(C) Pandemic Unemployment Assistance (PUA), under section 2102 of the CARES Act;

(D) Extended Benefits (EB), under section 3304 of title 26, United States Code;

(E) Short-Time Compensation (STC), under section 3306(v) of title 26, United States Code;

(F) Trade Readjustment Allowance (TRA), under sections 2291 through 2293 of title 19, United States Code; and

(G) Payments under the Self-Employment Assistant (SEA) program, under section 3306(t) of title 26, United States Code; and

(ii) provide self-certification that the claimant in unemployed or partially unemployed due to disruptions caused by COVID-19.

(e) The authority vested in the Secretary, acting through the FEMA Administrator, to approve lost wages assistance shall not be construed to encompass authority to approve other forms of assistance.

The state is responsible for refunding to FEMA any unobligated balances that FEMA paid that are not authorized to be retained per 2 C.F.R. 200.343(d) and the state is also responsible for recovering assistance awards from claimants obtained fraudulently. See UIPL No. 27-20 Change 1 dated August 17, 2020, citing 44 C.F.R. 206.120(f)(4 and 5).

44 C.F.R. section 206.16 provides as follows:

(a) The applicant must agree to repay to FEMA (when funds are provided by FEMA) and/or the State (when funds are provided by the State) from insurance proceeds or recoveries from any other source an amount equivalent to the value of the assistance provided. In no event must the amount repaid to FEMA and/or the State exceed the amount that the applicant recovers from insurance or any other source.

(b) An applicant must return funds to FEMA and/or the State (when funds are provided by the State) when FEMA and/or the State determines that the assistance was provided erroneously, that the applicant spent the funds inappropriately, or that the applicant obtained the assistance through fraudulent means.

If the claimant would have properly reported her wages from Jethro and Jake's, Inc., she would not have been paid regular unemployment benefits for the weeks at issue because her gross wages exceeded her weekly benefit amount, plus \$15.00 each week. Because the claimant was not eligible for regular unemployment insurance benefits, she was also not eligible for the supplemental LWAP payments for those weeks. As such, claimant was overpaid LWAP benefits in the amount of **\$900.00** for a three-week period ending September 5, 2020.

The next issue is whether the claimant engaged in fraud or misrepresentation when she incorrectly reported correct earnings from Jethro and Jake's, Inc.

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.

Public Law 116-136, Sec. 2104(f) provides in pertinent part:

EMERGENCY INCREASE IN UNEMPLOYMENT COMPENSATION BENEFITS.

(f) 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 Federal Pandemic Unemployment Compensation to which such individual was not entitled, such individual –

(A) shall be ineligible for further Federal Pandemic 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.

UIPL No. 20-21 issued on May 5, 2021, provides that "[w]ithin the context of the CARES Act, states must apply a minimum 15 percent monetary penalty to an individual's overpayment when the state determines that such an overpayment was made to an individual due to fraud". See Page 4. "Fraud includes instances where 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.” *Id.* page 4–5; see also Section 251(a) of the Trade Adjustment Assistance Extension Act of 2011 (TAAEA) (Pub. L. 112-40).

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, 394–95 (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.*

It is claimant’s obligation to read and understand the claimant handbook at the time of the initial application. The handbook is clear that *gross* wages must be reported, and it explicitly includes tips in its definition of earnings that must be reported. Claimant’s assertion that she reported net income is not credible, given that her report of wages earned closely aligns with the employer’s report of her hourly wages earned. However, claimant’s reported weekly wages contain no indication that tips constituted a portion of her weekly wages. Indeed, claimant acknowledged that tips make up the bulk of her income. The fact that tips are explicitly included as reportable wages in the handbook, combined with claimant’s acknowledgement that tips constituted the bulk of her income indicates that she omitted the material information regarding her tips. This was an intentional concealment of a material fact which led to the payment of benefits. Therefore, the penalty of 15% was properly imposed pursuant to Iowa Code section 96.16(4).

DECISION:

The July 28, 2022, (reference 04) unemployment insurance decision is MODIFIED IN FAVOR OF THE APPELLANT. The claimant is overpaid LWAP benefits in the amount of **\$900.00** for the weeks between July 26, 2020, and September 5, 2020, and is required to repay the agency this overpayment balance. The claimant engaged in misrepresentation and IWD properly imposed the administrative penalty of 15%. The penalty due to misrepresentation must be repaid as well.



Alexis D. Rowe
Administrative Law Judge

September 30, 2022
Decision Dated and Mailed

ar/jb

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.