

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**RONALD L BOWEN**  
Claimant

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**APPEAL 20A-UI-09098-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/15/20**  
**Claimant: Appellant (4R)**

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 July 22, 2020 (reference 02) Iowa Workforce Development (“IWD”) unemployment insurance decision that found claimant was overpaid unemployment insurance benefits of \$1,761.00 for 10 weeks between March 15, 2020 and June 6, 2020 because claimant failed to report wages earned with Southwest Iowa Planning. IWD imposed a 15% administrative penalty due to fraud/misrepresentation. The parties were properly notified of the hearing. A telephone hearing was held on September 16, 2020. The claimant, Ronald L. Bowen, participated personally. No witness with IWD participated at the hearing. Claimant Exhibits A and B were admitted. IWD Exhibit 1 was 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 March 15, 2020. His weekly benefit amount was \$309.00. Claimant filed for unemployment insurance benefits after being notified from his employer, Southwest Iowa Planning Council/Southwest Iowa Transit Agency (SWITA) that he was going to be working reduced hours due to the COVID 19 pandemic. Prior to March 15, 2020, claimant had previously worked between 30-35 hours per week as a bus driver with that employer.

For the benefit week of March 15, 2020 through March 21, 2020 the claimant worked 19.50 hours at an hourly rate of pay of \$16.14. Claimant reported earning \$315.00 in wages for that week when he filed his weekly-continued claim for benefits. On or about April 2, 2020, the claimant was notified from the employer that it would be paying employees additional “Administrative Leave Pay” under the CARES Act to employees whose hours were reduced due

to the COVID 19 pandemic. See Exhibit B. The employer averaged claimant's wages for the previous six months to come up with an average bi-weekly salary. See Exhibit 1. For a driver to qualify for COVID 19 Administrative Leave Pay, a driver must have been available to drive when requested. See Exhibit 1. For the week of March 15, 2020 through March 21, 2020, claimant was paid an additional \$189.75 in Administrative Leave Pay from the employer. When he filed his weekly-continued claim for benefits, the claimant only reported his regular wages earned and did not include the Administrative Leave Pay he earned. Claimant was paid benefits of \$71.00 based upon his gross wages reported.

For the benefit week of March 22, 2020 through March 28, 2020 the claimant worked 8.75 hours. He incorrectly reported wages based upon working 6.75 hours that week due to a mathematical error in his calculations. Claimant also earned a shift pay differential as the employer had increased his hourly rate of pay by \$5.00 which started March 21, 2020 and ran through June 30, 2020. See Exhibit 1. Claimant earned \$43.75 in shift differential wages and \$259.98 in Administrative Leave Pay from this employer for the week ending March 28, 2020, in addition to his regular wages. Claimant reported \$109.00 in wages earned when he filed his weekly-continued claim for that week. Claimant was paid benefits of \$277.00 based upon his gross wages reported.

For the benefit week of March 29, 2020 through April 4, 2020 the claimant worked 13.50 hours. He earned gross pay of \$217.89; shift differential pay of \$57.50 and Administrative Leave Pay of \$389.96. Claimant reported wages earned when he filed his weekly-continued claim in the amount of \$218.00. Claimant was paid benefits of \$168.00 based upon his gross wages reported.

For the benefit week of April 5, 2020 through April 11, 2020 the claimant worked 9.50 hours. He earned gross pay of \$153.33; shift differential pay of \$47.50 and Administrative Leave Pay of \$259.98. Claimant reported wages earned when he filed his weekly-continued claim in the amount of \$201.00. Claimant was paid benefits of \$185.00 based upon his gross wages reported.

For the benefit week of April 12, 2020 through April 18, 2020 the claimant worked 12.75 hours. He earned gross pay of \$205.79; shift differential pay of \$63.75 and Administrative Leave Pay of \$389.96. Claimant reported wages earned when he filed his weekly-continued claim in the amount of \$270.00. Claimant was paid benefits of \$116.00 based upon his gross wages reported.

For the benefit week of April 19, 2020 through April 25, 2020 the claimant worked 8.75 hours. He earned gross pay of \$141.23; shift differential pay of \$43.75 and Administrative Leave Pay of \$259.98. Claimant reported wages earned when he filed his weekly-continued claim in the amount of \$270.00. Claimant was paid benefits of \$116.00 based upon his gross wages reported.

For the benefit week of April 26, 2020 through May 2, 2020 the claimant worked 13.50 hours. He earned gross pay of \$217.89; shift differential pay of \$67.50; and Administrative Leave Pay of \$389.96. Claimant reported wages earned when he filed his weekly-continued claim in the amount of \$285.00. Claimant was paid benefits of \$101.00 based upon his gross wages reported.

For the benefit week of May 3, 2020 through May 9, 2020 the claimant worked 1.25 hours. He earned gross pay of \$20.18; shift differential pay of \$6.25; and Administrative Leave Pay of \$182.46. Claimant reported wages earned when he filed his weekly-continued claim in the amount of \$26.00. Claimant was paid benefits of \$309.00 based upon his gross wages reported.

For the benefit week of May 10, 2020 through May 16, 2020 the claimant worked 4.75 hours. He earned gross pay of \$76.67; shift differential pay of \$23.75; and Administrative Leave Pay of \$729.83. Claimant reported wages earned when he filed his weekly-continued claim in the amount of \$100.00. Claimant was paid benefits of \$286.00 based upon his gross wages reported.

For the benefit week of May 17, 2020 through May 23, 2020 the claimant worked 0.25 hours. He earned gross pay of \$4.04; shift differential pay of \$1.25; and Administrative Leave Pay of \$66.97. Claimant reported wages earned when he filed his weekly-continued claim in the amount of \$5.00. Claimant was paid benefits of \$309.00 based upon his gross wages reported.

For the benefit week of May 24, 2020 through May 30, 2020 the claimant worked 0.00 hours. He earned no wages, shift differential pay or Administrative Leave Pay. Claimant reported wages earned when he filed his weekly-continued claim in the amount of \$0.00. Claimant was paid benefits of \$309.00 based upon his gross wages reported.

For the benefit week of May 31, 2020 through June 6, 2020 the claimant worked 3.00 hours. He earned gross pay of \$48.42; shift differential pay of \$15.00; and Administrative Leave Pay of \$889.70. Claimant reported wages earned when he filed his weekly-continued claim in the amount of \$48.00. Claimant was paid benefits of \$309.00 based upon his gross wages reported.

IWD conducted an audit of the wages that the claimant reported from the period of March 15, 2020 through June 6, 2020. A gross overpayment of \$1,761.00 for 10 weeks between March 15, 2020 and June 6, 2020 was determined by IWD. See Exhibit 1. A 15% penalty was added due to misrepresentation/fraud.

When the claimant was notified by his employer in April of 2020 that he would be receiving additional Administrative Leave Pay he specifically asked his employer how to report it to Iowa Workforce Development. The employer had no answer for him. Claimant then tried to contact Iowa Workforce Development on numerous occasions by phone, many times waiting more than an hour and a half on hold before his telephone battery would die. Claimant also noted that when he filed his weekly-continued claims there was no place in the claim filing that asked him about Administrative Pay Leave being included as wages.

Claimant's administrative records establish that he also received Federal Pandemic Unemployment Compensation benefits for weeks in which he was not eligible for regular unemployment insurance benefits funded by the State of Iowa. The issue of whether the claimant is overpaid FPUC benefits for the weeks between March 15, 2020 and June 6, 2020 in which he was not eligible for regular unemployment insurance benefits funded by the State of Iowa pursuant to this decision is remanded to the Benefits Bureau for an initial investigation and determination.

## **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes as follows:

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.

The claimant was paid his regular wages, shift differential pay and Administrative Leave Pay as wages during the time period of March 15, 2020 through June 6, 2020. When claimant reported his wages earned each week, he failed to report his Administrative Leave Pay that he earned.

Iowa Admin. Code r. 871-23.3(1) provides:

(1) "Wages" means all remuneration for personal services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. Wages also means wages in lieu of notice, separation allowance, severance pay, or dismissal pay. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rule 23.2(96).

Based on the definition of wages in Iowa Admin. Code r. 871-23.3(1), the Administrative Leave Pay was reportable for the purposes of deductibility from unemployment insurance benefits. Claimant can earn up to 25% of his weekly-benefit amount in wages prior to a deduction being made. If the claimant earns his weekly-benefit amount, plus \$15.00 in a given week, he is disqualified due to excessive earnings. In claimant's case, he could earn up to \$77.00 in gross wages each week before deductions to his weekly-benefit amount would be made.

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 § 96.3, 96.4 and 96.19(38).

For the week-ending March 21, 2020, the claimant was overpaid \$71.00 in benefits.

For the week-ending March 28, 2020, the claimant was overpaid \$277.00 in benefits.

For the week-ending April 4, 2020, the claimant was overpaid \$168.00 in benefits.

For the week-ending April 11, 2020, the claimant was overpaid \$185.00 in benefits.

For the week-ending April 18, 2020, the claimant was overpaid \$116.00 in benefits.

For the week-ending April 25, 2020, the claimant was overpaid \$116.00 in benefits.

For the week-ending May 2, 2020, the claimant was overpaid \$101.00 in benefits.

For the week-ending May 9, 2020, the claimant was only eligible for \$177.00 based upon his gross earnings of \$209.00 but he was paid benefits of \$309.00 that week. As such, he was overpaid \$132.00 in benefits for the week-ending May 9, 2020.

For the week-ending May 16, 2020, the claimant was overpaid \$286.00 in benefits.

For the week-ending May 23, 2020, the claimant was not overpaid any benefits.

For the week-ending May 30, 2020, the claimant was not overpaid any benefits.

For the week-ending June 6, 2020, the claimant was overpaid \$309.00 in benefits.

As such, the total amount of overpayment of benefits from March 15, 2020 through June 6, 2020 was \$1,761.00. IWD correctly determined the overpayment of benefits. The claimant must repay that overpayment of benefits to the agency.

The next issue is whether the claimant engaged in fraud or misrepresentation when he failed to report the Administrative Leave Pay when filing his weekly-continued claims for benefits. The administrative law judge finds that he did not.

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.

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.*

Claimant’s testimony that he attempted to determine whether he was to report the Administrative Leave Pay as wages when filing his weekly-continued claims is credible. He attempted to contact Iowa Workforce Development on numerous occasions, to no avail. He attempted to have his employer help him with determining whether to report the Administrative Leave Pay when filing and no information was given to him. The claimant did not knowingly omit material information by failing to report his Administrative Leave Pay as wages when he filed his weekly-continued claims for unemployment insurance benefits. This was not an intentional concealment of wages, quite the opposite, the claimant attempted to file correctly on numerous occasions.

As such, the overpayment amount calculated by Iowa Workforce Development is correct. The claimant is overpaid benefits of \$1,761.00 for 10 weeks between March 15, 2020 and June 6, 2020 pursuant to Iowa Code § 96.3(7) and those benefits must be repaid to the agency. The administrative penalty of 15% of the amount of the overpayment was incorrectly imposed as no evidence of fraud or misrepresentation has been established.

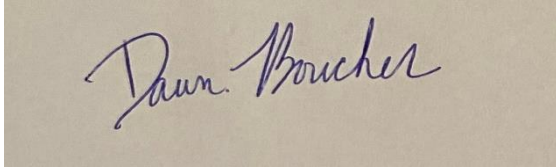
**DECISION:**

The July 22, 2020 (reference 02) unemployment insurance decision is modified in favor of the appellant. The claimant is overpaid benefits in the amount of \$1,761.00 for 10 weeks between March 15, 2020 and June 6, 2020 and is required to repay those benefits to the agency. The claimant did not engage in misrepresentation and IWD incorrectly imposed the administrative penalty of 15%. The penalty due to misrepresentation shall be removed.

**REMAND:**

The issue of overpayment of FPUC benefits paid during the weeks in which the claimant was not eligible for regular benefits funded by the State of Iowa, as delineated in the findings of fact, is remanded to the Benefits Bureau of IWD for an initial investigation and determination.

*This decision denies unemployment insurance benefits funded by the State of Iowa. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits. See Note to Claimant below.*



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Dawn Boucher  
Administrative Law Judge

September 22, 2020  
Decision Dated and Mailed

db/sam

**Note to Claimant**

- This decision determines you are not eligible for regular unemployment insurance benefits funded by the State of Iowa under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits funded by the State of Iowa under state law, you may qualify for benefits under the Federal Pandemic Unemployment Assistance ("PUA") section of the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act") that discusses eligibility for claimants who are unemployed due to the Coronavirus.
- **You will need to apply for PUA to determine your eligibility under the program.**  
For additional information on how to apply for PUA go to:  
<https://www.iowaworkforcedevelopment.gov/pua-information>.
- If you are denied regular unemployment insurance benefits funded by the State of Iowa and wish to apply for PUA, please visit:  
<https://www.iowaworkforcedevelopment.gov/pua-information> and scroll down to "Submit Proof Here." You will fill out the questionnaire regarding the reason you are not working and upload a picture or copy of your fact-finding decision. Your claim will be reviewed for PUA eligibility. If you are eligible for PUA, you will also be eligible for Federal Pandemic Unemployment Compensation (FPUC) until the program expires. Back payments PUA benefits may automatically be used to repay any overpayment of state benefits. If this does not occur on your claim, you may repay any overpayment by visiting:  
<https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>.
- If you have applied and have been approved for PUA benefits, this decision will **not** negatively affect your entitlement to PUA benefits.