

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

WILFREDO E MARTINEZ
Claimant

APPEAL NO. 20A-UI-01106-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
INVESTIGATIONS & RECOVERY**

OC: 06/09/19
Claimant: Appellant (1)

Iowa Code Sections 96.5(8) and 96.16(4) – Fraud-based Overpayment

STATEMENT OF THE CASE:

Wilfredo Martinez filed a timely appeal from the February 3, 2020, reference 01, decision that held he was overpaid \$14,604.06 between February 5, 2017 and November 30, 2020, based on his incorrect reporting of wages he earned with Shearer's Foods Burlington and Team Staffing Solutions. Mr. Martinez requested and in-person hearing. The decision further stated that a 15 percent penalty and a further administrative penalty would be added due to Mr. Martinez's misrepresentation of his wages. The decision warned that the overpayment amount, interest, and penalty must be repaid before Mr. Martinez could be considered for future benefits. An in-person hearing was scheduled for March 17, 2020 and appropriate notice was mailed to Mr. Martinez and to the Iowa Workforce Development Investigations & Recovery Unit. Effective March 16, 2020, an in-person was no longer practical due to COVID-19 and the in-person hearing was converted to a telephone hearing. Mr. Martinez participated. Kendra Mills represented the Iowa Workforce Development Investigations & Recovery Unit. Exhibits 1-1 to 1-9, 2-1 to 2-2, and 3 were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, DBIN, KCCO, WAGE-A. Spanish-English Interpreter Dario Becerra of CTS Language Link assisted with the hearing as needed.

ISSUES:

Whether the claimant was overpaid benefits.

Whether the overpayment of benefits was based on the claimant's intentional misrepresentation of his wages.

Whether the claimant is subject to an administrative penalty in connection with the overpayment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant, Wilfredo Martinez, established original claims for benefits that were effective January 29, 2017 and June 9, 2019. In connection with the January 29, 2017 original claim, the claimant received \$5,343.06 in benefits for the 12 weeks between January 29, 2017 and

April 22, 2017, when he reached the maximum benefit amount. During the 11 weeks between February 5, 2017 and April 22, 2017, the claimant was employed, continued to make weekly claims, and substantially underreported his wages. Through this intentional misrepresentation of wages, the claimant was overpaid \$4,258.06 in benefits for the weeks between February 5, 2017 and April 22, 2017. The benefits were direct-deposited into the claimant's bank account. In connection with the June 9, 2019 original claim, the claimant received \$12,546.00 in benefits for the 25 weeks between June 9, 2019 and November 30, 2019. During the 24 weeks between June 16, 2019 and November 30, 2019, the claimant was employed, continued to make weekly claims, and substantially underreported his wages. Through this intentional misrepresentation of wages, the claimant was overpaid \$10,346.00 in benefits. The benefits were placed onto a debit card.

The overpayment of benefits and misrepresented wages came to the attention of Iowa Workforce Development on November 22, 2019, when a fraud detection software flagged the claim due to the discrepancy between the wages the claimant reported when he made his weekly claim and the wages the claimant's employer's reported as part of the quarterly wage reporting requirements. At that time, Kendra Mills, Investigator 2, Iowa Workforce Development Integrity Bureau, commenced an investigation. Investigator Mills solicited and received wage information from the relevant employers. Investigator Mills prepared an Audit of Reported Wages that showed the disparity in wages reported by the claimant and his employment, as well as the overpayment amounts particular to each affected week. On January 31, 2020, Investigator Mills interviewed the claimant. The claimant conceded that he had set up both original claims. The claimant conceded that he had made the weekly claims in connection with the 2019 claim. The claimant asserted that his wife, now his ex-wife, had continued to make the weekly claims 2017 after the claimant set up the 2017 claim. However, the particular pattern of misrepresentation is consistent between the two affected claim years. The claimant had provided his spouse with his PIN. With regard to the very small wage amounts the claimant had consistently claimed each week, the claimant asserted he reported his hourly wage amount and assumed Iowa Workforce Development would somehow calculate the total wages for the week. With regard to why the claimant continued to make weekly reports, the claimant asserted he thought he had to continue to make weekly claims in case he was subsequently laid off during the claim year. Iowa Workforce Development had provided the claimant with appropriate wage reporting instructions in the handbook the claimant had to acknowledge when he set up each original claim. The claimant had experience with filing unemployment insurance claims prior to the 2017 original claim. At no point from the time the claimant filed the 2017 claim until the investigator interviewed the claimant on January 31, 2020, did the claimant contact Iowa Workforce Development with questions or for guidance in making weekly claims or reporting his wages. When Investigator Mills mentioned that the matter might be referred for prosecution, the claimant indicated that he believed that about \$10,000.00 remained on the debit card. Immediately following the interview, the claimant went to the Burlington IowaWORKS Center in an attempt to repay a substantial amount of the overpaid benefits.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code 96.3(7)(a) provides:

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 Code section 96.5(8) provides:

Administrative penalty. If the department finds that, with respect to any week of an insured worker's unemployment for which such person claims credit or benefits, such person has, within the thirty-six calendar months immediately preceding such week, with intent to defraud by obtaining any benefits not due under this chapter, willfully and knowingly made a false statement or misrepresentation, or willfully and knowingly failed to disclose a material fact; such person shall be disqualified for the week in which the department makes such determination, and forfeit all benefit rights under the unemployment compensation law for a period of not more than the remaining benefit period as determined by the department according to the circumstances of each case. Any penalties imposed by this subsection shall be in addition to those otherwise prescribed in this chapter.

Iowa Code section 96.16(4)(a) and (b) provides:

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.

The evidence in the record establishes that the claimant intentionally misrepresented his wages during 11 weeks between February 5, 2017 and April 22, 2017 and during the 24 weeks between June 16, 2019 and November 30, 2029 to receive overpayments of benefits totaling \$14,604.06. The claimant provided an implausible explanation for persistent underreporting and misrepresentation of his wages. The claimant is required to repay the benefits. Based on the intentional misrepresentation of wages, the claimant must also pay a 15 percent penalty based on the total overpayment amount. The claimant is subject to the further administrative penalty and recovery procedure referenced in the above statutes. The claimant must repay all outstanding amounts before he can again be eligible for unemployment insurance benefits. The claimant must meet all other eligibility requirements.

DECISION:

The February 3, 2020, reference 01, decision is affirmed. The claimant was overpaid \$14,604.06 in benefits for the period between February 5, 2017 and November 30, 2020, based on his incorrect reporting of wages he earned with Shearer's Foods Burlington and Team Staffing Solutions. The claimant is required to repay the overpaid benefits. Based on the claimant's intentional misrepresentation of wages, the claimant must also pay a 15 percent penalty based on the total overpayment amount. The claimant is subject to the further administrative penalty and recovery procedure referenced in the above statutes. The claimant must repay all outstanding amounts before he can again be eligible for unemployment insurance benefits. The claimant must meet all other eligibility requirements.



James E. Timberland
Administrative Law Judge

March 24, 2020
Decision Dated and Mailed

jet/scn