

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

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**JEREMIAH J MOWERY**  
Claimant

**APPEAL 22A-UI-10715-DZ-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT INVESTIGATION &  
RECOVERY**

**OC: 09/15/19**  
**Claimant: Appellant (4)**

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Iowa Code § 96.3(7) – Overpayment of Benefits  
Iowa Code § 96.16(4) – Offenses and Misrepresentation  
Iowa Code § 96.5(8) – Disqualification – Administrative penalty  
Iowa Admin. Code r. 871-25.1 – Definitions – Misrepresentation & Fraud  
Iowa Admin. Code r. 871-25.9 – Administrative Penalties  
PL 116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation

**STATEMENT OF THE CASE:**

Jeremiah J. Mowery, the claimant/appellant, filed an appeal from the Iowa Workforce Development's (IWD) April 19, 2022 (reference 03) unemployment insurance (UI) decision that concluded he was overpaid Federal Pandemic Unemployment Compensation (FPUC) benefits in the gross amount of \$1,200.00 because he did not report and/or incorrectly reported wages earned with employer Jensen Crane Services Inc for 2 weeks while receiving REGULAR UI benefits. IWD imposed a 15 percent administrative penalty due to misrepresentation. The parties were properly notified of the hearing. A telephone hearing was held on July 11, 2022. Mr. Mowery participated personally. Angelita Sills-Campos, IWD investigator, participated on behalf of the department. Hannah Best, human resources coordinator, participated on behalf of the employer. Department's Exhibits A-C were admitted as evidence. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Has Mr. Mowery been overpaid FPUC benefits?  
Was the penalty properly imposed?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: Mr. Mowery filed a claim for UI benefits with an effective date of September 15, 2019. His weekly benefit amount for that claim year was \$376.00. Mr. Mowery has worked for employer, Jensen Crane Service Inc, as a full-time crane rigger since 2013. The employer pays him about \$20.00 per hour. Mr. Mowery filed weekly continued claims and IWD paid him REGULAR (state) UI benefits on his claim. IWD also paid Mr. Mowery FPUC benefits in the gross amount of

\$1,200.00 for the 2 weeks between March 29, 2020 and April 11, 2020. Department's Exhibits B9.

FPUC was a program under the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 that provided additional payment to those individuals that are receiving state or federal unemployment insurance payments. It is funded by the federal government, not by state unemployment taxes paid by employers. The Continued Assistance for Unemployed Workers Act of 2020 (enacted December 27, 2020) and American Rescue Act of 2021 (enacted March 11, 2021) extended FPUC benefits for weeks of unemployment to September 6, 2021. The FPUC amount was \$600.00 per week from April 5, 2020 through July 31, 2020. The FPUC amount was \$300.00 per week from December 27, 2020 through September 5, 2021. Governor Reynolds ended Iowa's participation in federal pandemic-related unemployment benefit programs, including the FPUC program, effective June 12, 2021.

Over two years and seven months after he filed his claim effective September 15, 2019, and after he had already received REGULAR (state) UI benefits and FPUC benefits, IWD issued an April 19, 2022, (reference 02) UI decision finding Mr. Mowery was overpaid REGULAR (state) UI benefits for 10 weeks between September 22, 2019 and September 12, 2020, including the weeks of March 29, 2020 through April 4, 2020 and April 5-11, 2020 because he did not report and/or incorrectly reported wages earned with employer Jensen Crane Services Inc while receiving REGULAR UI benefits. IWD also assessed a 15 percent administrative penalty. Mr. Mowery appealed the UI decision. The administrative law judge's decision in Appeal 22A-UI-10710-DZ-T modified the reference 02 UI decision in favor of Mr. Mowery finding that he had been overpaid REGULAR (state) UI benefits but removed the 15 percent administrative penalty. That meant Ms. Mowery was not eligible for the UI benefits he had been overpaid.

When he established each claim, Mr. Mowery agreed to read the IWD UI Handbook. The 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 you have not yet received the payment. To calculate the amount to report, multiply the number of hours you worked by your hourly wage.

Example: 10 hours X \$12.00/hour = \$120.00 in gross earnings

You should report the full gross amount of earnings and we will calculate any deductions. Deductions and/or earnings are calculated differently depending on the type of income. See the general guidelines on deductibility below.

The handbook also provides in part:

Preparing to File a Weekly Claim

You should have the following information available when filing your weekly claim:

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

In addition, each week Mr. Mowery would complete a weekly continued claim, 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.

Before completing his weekly continued claim each week, Mr. Mowery had to check a box that stated he understood the warning message above and wished to proceed. When filing a weekly claim, Mr. Mowery was instructed to answer the question "Did you work during the week of Sunday, [month day] through Saturday, [month day]?" Mr. Mowery was also instructed to report wages by entering "the gross amount 'rounded to the nearest dollar.'"

In relevant part, Mr. Mowery reported weekly gross wages of \$350.00 for the week of March 29, 2020 through April 4, 2020, and \$220.00 for the week of April 5-11, 2020. Department's Exhibit B4 – B4(2). IWD conducted an audit of Mr. Mowery's 2019 claim in January 2021 and asked the employer to report his weekly gross wages from August 30 through October 3 in 2020 to IWD. Department's Exhibit A1. The employer reported Mr. Mowery's weekly gross wages to IWD in January 2021. *Id.* In the 2020 claim year, Mr. Mowery filed weekly claims for 33 weeks between September 13, 2020 and September 11, 2021. Department's Exhibits B5 – B5(4). Mr. Mowery reported earning \$0.00 each week for all but five of the 33 weeks. *Id.* IWD conducted an audit of Mr. Mowery's 2020 claim in July 2021 and asked the employer to report his weekly gross wages from December 27, 2020 through April 3, 2021 to IWD. Department's Exhibit A1(2). The employer reported Mr. Mowery's weekly gross wages to IWD. *Id.* Based on the difference between what Mr. Mowery reported on his weekly claims in the 2019 and 2020 claim years and what the employer reported to IWD, in March 2022 IWD asked the employer to report Mr. Mowery's weekly gross wages from September 23, 2018 through December 19, 2021 to IWD. Department's Exhibits A9 – A9(3). Mr. Mowery had also filed an initial claim effective April 1, 2018. The employer reported Mr. Mowery's weekly gross wages to IWD. *Id.* In relevant part, the employer reported that Mr. Mowery earned weekly wages of \$680.77 for the week of March 29, 2020 through April 4, 2020, and \$605.12 for the week of April 5-11, 2020. *Id.*

On March 31, 2022, Ms. Sills-Campos mailed Mr. Mowery a preliminary audit, which stated that he may have been overpaid benefits in the gross amount of \$14,151.96 between September 22, 2019 and February 13, 2021, because he did not report and/or incorrectly reported wages earned with the employer. Department's Exhibit A11 – A11(3). The letter also informed Mr. Mowery that an overpayment may result in consequences including a 15 percent penalty. *Id.*

Mr. Mowery participated in the scheduled April 8, 2022 telephone interview with Ms. Sills-Campos. Department's Exhibit A2 – A2(2). Mr. Mowery did not dispute the overpayment in the 2019 claim year or provide evidence that the wages reported by the employer for that claim year were inaccurate. *Id.* Mr. Mowery told Ms. Sills-Campos that he had made mistakes when he reported his weekly wages in that claim year and he accepted responsibility for his mistakes. *Id.* During the hearing, Mr. Mowery testified that during the 2019 claim year he had estimated his wages each week.

IWD assessed a 15 percent administrative penalty on this overpayment because the department determined that Mr. Mowery had intentionally misrepresented or omitted his wages to collect UI benefits. Ms. Sills-Campos testified that she did not find Mr. Mowery's reasons for incorrectly reporting his wages credible since he had filed UI claims in Iowa since 2014 so he should have known the rules.

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

For the reasons that follow, the administrative law judge concludes IWD did correctly establish and calculate an overpayment of UI benefits, and IWD did not correctly impose a 15 percent penalty due to misrepresentation.

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.

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.

PL116-136, Sec. 2104 provides, in pertinent part:

(b) Provisions of Agreement

(1) Federal pandemic unemployment compensation.--Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to

(A) the amount determined under the State law (before the application of this paragraph), plus

(B) an additional amount of \$600 (in this section referred to as "Federal Pandemic Unemployment Compensation").

....

(f) Fraud and Overpayments

(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...

Since Mr. Mowery is not eligible for REGULAR (state) UI benefits for the weeks of March 29, 2020 through April 4, 2020 and March 5-11, 2020 he is also not eligible for FPUC benefits for those weeks. Mr. Mowery has been overpaid FPUC benefits in the gross amount of \$1,200.00 for 2 weeks between March 29, 2020 and April 11, 2020, which should be repaid.

IWD is authorized to impose an administrative penalty when it determines that a claimant has within the thirty-six preceding calendar months, willfully and knowingly 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

Based on the evidence presented, Mr. Mowery did not intentionally misrepresent or omit wages when he filed his weekly claims for the 2 weeks between March 29, 2020 and April 11, 2020.

Mr. Mowery was careless and did not pay attention when he reported his estimated wages each week. However, his mistaken reporting due to carelessness does not rise to the level of fraud or misrepresentation. Since the department has not established that Mr. Mowery misrepresented or intentionally omitted wages when he filed his weekly claims for the 2 weeks between March 29, 2020 and April 11, 2020, the imposition of the 15 percent penalty due to misrepresentation is not warranted.

**DECISION:**

The April 19, 2022 (reference 03) UI decision is MODIFIED IN FAVOR OF THE APPELLANT, Mr. Mowery. Mr. Mowery has been overpaid FPUC benefits in the gross amount of \$1,200.00. IWD incorrectly imposed an administrative penalty due to misrepresentation, and the administrative penalty is not warranted and removed.



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Daniel Zeno  
Administrative Law Judge  
Iowa Department of Inspections and Appeals  
Administrative Hearings Division, UI Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515) 478-3528

September 15, 2022  
Decision Dated and Mailed

dz/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](http://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 adquiera 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.