

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

EVAN J MCGUIRE
Claimant

APPEAL 20A-UI-03636-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
INVESTIGATIONS & RECOVERY**

**OC: 04/12/20
Claimant: Appellant (1)**

Iowa Code §96.16(4) – Misrepresentation
Iowa Code § 96.5(13) – Disqualification due to Outstanding Fraud Overpayment
Iowa Code § 96.3(7) – Overpayment of Benefits
Iowa Admin. Code r. 871-25.1 – Misrepresentation & Fraud
Iowa Code § 96.6(2) - Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the April 20, 2020 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that found claimant was not eligible for unemployment insurance benefits due to an outstanding fraud overpayment balance. The parties were properly notified of the hearing. A telephone hearing was held on May 20, 2020. The claimant participated personally. Janelle Brashaw, the claimant’s neighbor observed the hearing. IWD participated by documentation. Claimant Exhibit A was admitted. IWD exhibit One (formerly marked as A1-A52) was admitted into evidence. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the appeal was filed in a timely manner.
Whether IWD correctly determined the claimant was overpaid unemployment insurance benefits and if the overpayment amount was correctly calculated.
Whether IWD properly imposed a penalty based upon the claimant’s misrepresentation.
Whether the claimant is ineligible for benefits due to an outstanding fraud overpayment balance?

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 January 31, 2016. For twenty-seven weeks the claimant either did not report or underreported his wages from employment. The misrepresentation of his wages resulted in an overpayment of unemployment insurance benefits in an amount of \$5,695.07 over a twenty-seven week period between January 31, 2016, and August 6, 2016.

A decision was issued on November 9, 2018 which found that the claimant was overpaid benefits of \$5,695.07. It stated, "The overpayment plus any accrued interest must be repaid before any further unemployment insurance benefits are paid to you". A 15% penalty was added due to fraud. The claimant did not appeal the decision and it became final.

That overpayment decision was mailed to the appellant/claimant's last known address of record on November 9, 2018. The decision was not received by the appellant/claimant within ten days. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by November 19, 2018. On April 12, 2020, the claimant filed a new claim of unemployment insurance benefits. On April 24, 2020, the claimant learned of an impediment to his receipt of unemployment insurance benefits in that he had a large overpayment. The April 20, 2020 (reference 01) representative's decision was mailed to the claimant's current address. It stated he was not eligible to receive unemployment insurance benefits because he had an unpaid fraud overpayment balance. The claimant filed his appeal to the two decisions. It was postmarked on April 28, 2020.

The claimant argues that he did not report his correct income because he was reporting net income rather than gross, he was told what income to report by friends, he did not know how to figure his income by multiplying his hours worked by his hourly wage, and he did not know how to file his weekly claim. The claimant admits he did not seek help by contacting the department or reviewing the claimant handbook. He did not remember a prompt when filing that told him to report his earnings before withholding.

To date, claimant has failed to pay the outstanding overpayment amount owed, including interest, penalties, and lien fees. The current outstanding balance owed is \$6,569.59, due to a 15% penalty.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge

allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The appellant/claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes IWD did correctly establish and calculate the claimant's overpayment of benefits, and did correctly impose a 15% penalty due to the claimant's 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.

The administrative law judge is persuaded the claimant knew or should have known he must report all wages earned each week and that failure to properly do so, could result in an overpayment, which he must repay (Department Exhibit One). No evidence was presented that the wages reported by the employer to IWD were inaccurate or incorrect. Consequently, the claimant was able to collect both wages and unemployment insurance benefits each week. As a result, the claimant was overpaid benefits in the amount of \$5,695.07.00, to which he was not entitled (Department Exhibit One). The administrative law judge concludes therefore, that the overpayment was correctly calculated.

The next issue 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

Based on the evidence presented, the administrative law judge concludes the claimant knowingly omitted material information to IWD when he failed to correctly report his wages earned when he filed for unemployment insurance benefits. (Department Exhibit One). The claimant's repeated and intentional concealment of wages led to the claimant receiving an overpayment of unemployment insurance benefits.

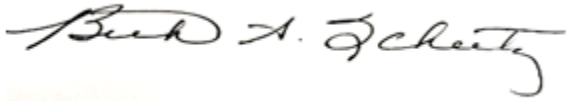
Therefore, the administrative law judge concludes the calculated overpayment was correct, and the claimant knowingly omitted material information to IWD when he failed to correctly report wages earned for the period and concurrently filed for unemployment insurance benefits. Accordingly, the administrative law judge concludes the overpayment was correctly calculated and the application of a 15% penalty due to misrepresentation was warranted.

For the reasons that follow, the administrative law judge concludes that the claimant is not eligible for benefits until the balance of the benefits received by the claimant due to misrepresentation, including all penalties, interest, and lien fees are paid in full. Benefits are denied at this time.

Claimant currently owes a balance of \$6,569.59 due to a decision issued on November 9, 2018 which found that the claimant failed to report or incorrectly reported wages, resulting in determination that the claimant engaged in misrepresentation pursuant to Iowa Code § 96.16(4). Because this fraud balance remains unpaid, claimant is not eligible for benefits at this time. See Iowa Code § 96.5(13).

DECISION:

The April 20, 2020, (reference 01) unemployment insurance decision is affirmed. The appeal in this case was timely. The claimant was overpaid benefits. IWD correctly imposed the administrative penalty due to the claimant's misrepresentation. The claimant is not eligible for benefits. Benefits are withheld until the claimant has paid the unpaid fraud overpayment balance, plus penalties, interest, and lien fees, provided claimant is otherwise eligible.



Beth A. Scheetz
Administrative Law Judge

May 22, 2020
Decision Dated and Mailed

bas/mh