

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GERALD A KING
Claimant

APPEAL 19A-UI-04234-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 05/12/19
Claimant: Appellant (1)**

Iowa Code § 96.5(13) – Disqualification due to Outstanding Fraud Overpayment
Iowa Code § 96.16(4) – Offenses and Misrepresentation

STATEMENT OF THE CASE:

The claimant/appellant, Gerald A. King, filed an appeal from the May 20, 2019, (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision which concluded the claimant was ineligible 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 June 24, 2019. The claimant, Gerald A. King, participated personally. Kevan Irvine, Workforce Program Coordinator, participated on behalf of IWD. IWD Exhibits 1-1 through 5-2 were admitted. The administrative law judge took official notice of the claimant’s unemployment insurance benefits records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant 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 July 13, 2008. During that claim year, an investigatory audit was conducted regarding the claimant’s failure to report all wages while he concurrently filed weekly continued claims for benefits (Department Exhibits 4-1 through 4-30). The claimant was made aware of the investigation, possible overpayment and penalties, when IWD investigator Tom Carnahan mailed the claimant a Preliminary Audit Notice. (Exhibit 4-31) Claimant was instructed to report for an in-person interview on April 7, 2009, at 10:30 a.m. to the Iowa Workforce Development office on South 17th Street in Clinton, Iowa. (Exhibit 4-31) Claimant does not believe that he received this Preliminary Audit Notice, and he did not report for the in-person interview.

Consequently, a decision was issued on April 21, 2009, which found that the claimant was overpaid benefits of \$1,528.26, including interest and a 15% penalty due to fraud. The claimant did not appeal the decision, and it became final.

The claimant denied receipt of the initial decision, and two subsequent overpayment statements which were mailed to him in July 2009 and May 2010. (Exhibits 5-1 and 5-2) He explained that he was living with someone at the time who was throwing away his mail. He appears to have learned of the overpayment in 2019 when he filed a subsequent claim for unemployment insurance benefits. The claimant did not make any efforts to pay or address the outstanding overpayment with IWD.

The claimant then established a claim with an effective date of May 12, 2019. Effective July 1, 2018, a claimant with an overpayment by reason of misrepresentation is disqualified to receive unemployment insurance benefits until the overpayment interest and associated fees and penalties are paid in full. Iowa Code section 96.5(13). To date, the claimant has failed to pay the outstanding overpayment amount owed, including interest, penalties, and lien fees. The current outstanding balance owed is \$1,548.52. (Department Exhibit 2-1)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is ineligible 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.

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

4. Misrepresentation.

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.

"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

The undisputed evidence is the department conducted an investigatory audit in March and April 2009 which resulted in Iowa Workforce Development establishing an overpayment and imposing a penalty due to misrepresentation/fraud. The claimant did not appeal the decision or inquire about the overpayment or administrative penalty due to fraud/misrepresentation. The decision is final at this time. Therefore, the administrative law judge concludes the claimant has an established overpayment derived from fraud/misrepresentation.

Iowa Code section 96.5(13) provides:

Overpayment resulting in disqualification. If the department finds that an individual has received benefits by reason of misrepresentation pursuant to section 96.16, such individual shall be disqualified for benefits until the balance of the benefits received by the individual due to misrepresentation, including all penalties, interest, and lien fees, is paid in full.

The claimant admits the documentation offered as exhibits by Kevan Irvine are accurate. Claimant acknowledges that he received unemployment insurance benefits and also received wages for the same time period. The claimant presented no evidence to support that the overpayment was otherwise paid off or recovered by IWD. The administrative law judge understands claimant's frustration with the recent change to Iowa law. However, she is bound to follow the law, and the law clearly applies to all individuals with unpaid overpayments that resulted from misrepresentation.

Based on the evidence presented, the administrative law judge concludes the claimant currently owes a balance of \$1,548.52 due to a decision issued on April 21, 2009, which found that the claimant was overpaid benefits and engaged in misrepresentation pursuant to Iowa Code § 96.16(4). Because this fraud balance remains unpaid, the claimant is not eligible for benefits at this time.

DECISION:

The May 20, 2019, (reference 01) unemployment insurance decision is affirmed. The claimant is ineligible 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.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn