GLENN MARSHALL
Claimant

IOWA WORKFORCE DEVELOPMENT

APPEAL 20A-UI-12301-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/27/20
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:

On October 7, 2020, Glenn Marshall (claimant/appellant) filed an appeal from the October 2, 2020, reference 01, Iowa Workforce Development ("IWD") unemployment insurance decision, which concluded he was ineligible for unemployment insurance benefits due to an outstanding fraud overpayment balance. The parties were properly notified of the hearing. A telephone hearing began on December 4, 2020 and concluded December 14, 2020. The claimant participated personally, and he was represented by Gwen Williams, his sister. The department's Exhibits D1 through D3 were admitted into the record.

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: IWD records show that the claimant filed a claim for unemployment insurance benefits with an effective date of July 12, 2015. During that claim year, an investigatory audit was conducted regarding the claimant's failure to report all wages while he concurrently filed weekly claims for benefits. The agency provided notice of an audit to the claimant at his address of record. The claimant failed to participate. Consequently, a decision was issued on December 11, 2015, which found that the claimant was overpaid benefits of $1,440.00, including interest and a 15% penalty due to fraud. (Exhibit D1) The claimant did not appeal the decision and it became final. The claimant has not made efforts to pay or address the outstanding overpayment with IWD.

The claimant denied he filed the claim for benefits or had knowledge of the overpayment. He contends that the family member who received his mail used his social security number to obtain the benefits. However, no documentation has been provided to substantiate that the claimant was a victim of identity theft.

The claimant then established a claim with an effective date of September 27, 2020. 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 $2,228.59. (Exhibit D3)

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) provides:

> Offenses.
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> 4. Misrepresentation.
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> 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, in the discretion of the department, either be liable to have the sum deducted from any future benefits payable to the individual under this chapter or 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.
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> 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

The undisputed evidence is the agency conducted an investigatory audit in 2015, which resulted in IWD 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 claimant's contention that he was the victim of

identity theft is not persuasive without supporting documentation. The decision is final at this time. Therefore, the claimant has an established overpayment derived from fraud/misrepresentation.

Iowa Code section 96.5(13) provides:

> An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:
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> 13. 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.

Based on the evidence presented, the claimant currently owes a balance of $2,228.59, due to a decision issued on July 12, 2015, 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 October 2, 2020, 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.

Stephanie R. Callahan
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Stephanie R. Callahan
Administrative Law Judge

   December 30, 2020
Decision Dated and Mailed

src/mh

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. 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. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to self-certify for PUA to determine your eligibility under the program.** Additional information on how to self-certify for PUA can be found at https://www.iowaworkforcedevelopment.gov/pua-information. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.