

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

SYLVIA THURMAN

Claimant

APPEAL 22R-UI-14669-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 03/07/21
Claimant: Appellant (1)**

Iowa Code § 96.3(7) – Overpayment of Benefits
Iowa Code § 96.1A(37)a & b – Total and Partial Unemployment
Iowa Admin. Code r. 871-24.18-Wage Limitation
Iowa Code § 96.16(4) – Offenses and Misrepresentation
Iowa Admin. Code r. 871-25.1 & 9 – Misrepresentation & Fraud
Iowa Code § 96.5(8)-Administrative Penalty

STATEMENT OF THE CASE:

On January 24, 2022, the claimant/appellant filed an appeal from the January 14, 2022 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision. The decision found claimant was overpaid regular unemployment insurance benefits funded by the State of Iowa in the amount of \$8,610.00 for eighteen weeks between March 13, 2021, through August 21, 2021, because claimant failed to report wages earned with Whirlpool. IWD imposed a 15% and thirty-six month administrative penalty due to the misrepresentation. The parties were properly notified of the hearing. A telephone hearing was scheduled to be held on April 27, 2022, however, claimant did not appear and a default decision was entered. Claimant appealed the decision to the Employment Appeal Board (EAB) and the EAB remanded the appeal for hearing. A hearing was scheduled to be held August 11, 2022, however, the hearing was postponed due to claimant failing to submit her exhibits to the parties prior to the hearing. The hearing was postponed until September 20, 2022. On September 20, 2022, claimant requested that the hearing be rescheduled due to her being with her mother who is in poor health and in the hospital out of state. The hearing was rescheduled to another date. After proper notice the hearing was held October 26, 2022. The claimant participated personally. Investigator Troy Shelley participated on behalf of IWD. This hearing was consolidated with Appeals 22A-UI-14670-CS-T; 22A-UI-14671-CS-T; 22A-UI-14672-CS-T; 22A-UI-14673-CS-T; 22A-UI-14674-CS-T; and 22A-UI-14675-CS-T. Exhibits A-1, A-2, A-3, A-4, A-5, A-6, B-1, B-2, B-3, C-1, C-2, C-3, C-4, C-5, C-6, C-7, 1, 2, 3, 4, and 5 were admitted into the record. The administrative law judge took official notice of the claimant's unemployment insurance benefits records including DBIN-1, DBIN-2, NMRO, KCCO, KPY1, and KPYX.

ISSUES:

- I. Did IWD correctly determine that claimant was overpaid regular unemployment insurance benefits and was the overpayment amount correctly calculated?
- II. Did IWD properly impose a penalty based upon claimant's misrepresentation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant filed a claim for unemployment insurance benefits due to her employer, Whirlpool Corporation, going into a plant shut down on November 15, 2019. Claimant filed for unemployment benefits in November 2019. For reasons unclear claimant's unemployment claim was not effective until December 8, 2019. (DBIN-2). Her weekly benefit amount was \$500.00 based upon the wages reported in her base period. (DBIN-2). Claimant filed weekly-continued claims beginning December 8, 2019 and continuing consecutively each week through February 15, 2020. (KCCO). Claimant stopped filing for benefits and then filed an additional claim on March 29, 2020. (KCCO). Claimant filed each consecutive weeks through November 21, 2020. (KCCO). Claimant filed a new claim for benefits on March 7, 2021. (DBIN-1). Claimant filed for benefits beginning March 7, 2021, and each consecutive week thereafter through September 4, 2021. (DBIN-1).

Claimant received regular unemployment insurance benefits funded by the State of Iowa beginning March 7, 2021. Claimant's gross weekly benefit amount for this claim year was \$493.00. Claimant filed for benefits each consecutive week and exhausted her state unemployment claim on September 4, 2021. Claimant received her gross maximum benefit amount of \$12,818.00.

When claimant filed a new claim on March 7, 2021, she began receiving a gross weekly Federal Pandemic Unemployment Compensation (FPUC) benefit amount of \$300.00. (KPYX). This FPUC payment continued through the week ending June 12, 2021. (KPYX).

IWD conducted an audit and discovered that claimant's employer reported more wages and other pay for claimant in their quarterly report to the State of Iowa. This cause IWD to send a request of wage records to claimant's employer for the period of December 8, 2019, through August 21, 2021. (Exhibit A3(2)-(4)).

Employer reported for the week of March 7, 2021, through March 13, 2021 claimant worked 42.21 hours and earned \$1,262.81 in wages. (Exhibit A3(3)). Claimant reported that she did not work that week and reported \$0.00 in wages. (KCCO). Claimant received her full unemployment benefit of \$493.00 for the week. (DBIN-1).

Employer reported for the week of March 28, 2021, through April 3, 2021 claimant worked 38.33 hours and earned \$1,087.30 in wages and was paid \$91.60 in bonus pay and \$209.60 in holiday pay. (Exhibit A3(3)). Claimant reported that she did not work that week and reported \$0.00 in wages, \$0.00 in bonus pay and \$0.00 in holiday pay. (KCCO). Claimant received her full unemployment benefit of \$493.00 for the week. (DBIN-1).

Employer reported for the week of April 25, 2021, through May 1, 2021 claimant worked 50.16 hours and earned \$1,445.23 in wages. (Exhibit A3(3)). Claimant reported that she did not work that week and reported \$0.00 in wages. (KCCO). Claimant received her full unemployment benefit of \$493.00 for the week. (DBIN-1).

Employer reported for the week of May 2, 2021, through May 8, 2021 claimant worked 48.27 hours and earned \$1,375.20 in wages. (Exhibit A3(3)). Claimant reported that she did not work that week and reported \$0.00 in wages. (KCCO). Claimant received her full unemployment benefit of \$493.00 for the week. (DBIN-1).

Employer reported for the week of May 9, 2021, through May 15, 2021 claimant worked 39.22 hours and earned \$1,027.57 in wages. (Exhibit A3(3)). Claimant reported that she did not work

that week and reported \$0.00 in wages. (KCCO). Claimant received her full unemployment benefit of \$493.00 for the week. (DBIN-1).

Employer reported for the week of May 16, 2021, through May 22, 2021 claimant worked 50.41 hours and earned \$1,457.06 in wages. (Exhibit A3(3)). Claimant reported that she did not work that week and reported \$0.00 in wages. (KCCO). Claimant received her full unemployment benefit of \$493.00 for the week. (DBIN-1).

Employer reported for the week of May 23, 2021, through May 29, 2021 claimant worked 39.98 hours and earned \$1,104.47 in wages. (Exhibit A3(3)). Claimant reported that she did not work that week and reported \$0.00 in wages. (KCCO). Claimant received her full unemployment benefit of \$493.00 for the week. (DBIN-1).

Employer reported for the week of May 30, 2021, through June 5, 2021 claimant worked 25.95 hours and earned \$679.97 in wages. Claimant was paid \$209.60 in vacation pay and \$209.60 in holiday pay. (Exhibit A3(3)). Claimant reported that she did not work that week and reported \$0.00 in wages, \$0.00 in vacation pay, and \$0.00 in holiday pay. (KCCO). Claimant received her full unemployment benefit of \$493.00 for the week. (DBIN-1).

Employer reported for the week of June 6, 2021, through June 12, 2021 claimant worked 35.13 hours and earned \$920.41 in wages. (Exhibit A3(3)). Claimant reported that she did not work that week and reported \$0.00 in wages. (KCCO). Claimant received her full unemployment benefit of \$493.00 for the week. (DBIN-1).

Employer reported for the week of June 13, 2021, through June 19, 2021 claimant worked 44.67 hours and earned \$1,272.53 in wages. (Exhibit A3(3)). Claimant reported that she did not work that week and reported \$0.00 in wages. (KCCO). Claimant received her full unemployment benefit of \$493.00 for the week. (DBIN-1).

Employer reported for the week of June 20, 2021, through June 26, 2021 claimant worked 41.83 hours and earned \$1,224.77 in wages. (Exhibit A3(3)). Claimant reported that she did not work that week and reported \$0.00 in wages. (KCCO). Claimant received her full unemployment benefit of \$493.00 for the week. (DBIN-1).

Employer reported for the week of June 27, 2021, through July 3, 2021 claimant worked 31.20 hours and earned \$817.52 in wages and was paid \$209.60 in holiday pay. (Exhibit A3(3)). Claimant reported that she did not work that week and reported \$0.00 in wages and \$0.00 in holiday pay. (KCCO). Claimant received her full unemployment benefit of \$493.00 for the week. (DBIN-1).

Employer reported for the week of July 4, 2021, through July 10, 2021 claimant worked 35.02 hours and earned \$957.13 in wages and was paid \$127.43 in bonus pay and in \$209.60 in vacation pay. (Exhibit A3(3)). Claimant reported that she did not work that week and reported \$0.00 in wages, \$0.00 in bonus pay, \$0.00 in vacation pay. (KCCO). Claimant received her full unemployment benefit of \$493.00 for the week. (DBIN-1).

Employer reported for the week of July 11, 2021, through July 17, 2021 claimant worked 54.36 hours and earned \$1,612.44 in wages. (Exhibit A3(3)). Claimant reported that she did not work that week and reported \$0.00 in wages. (KCCO). Claimant received her full unemployment benefit of \$493.00 for the week. (DBIN-1).

Employer reported for the week of July 18, 2021, through July 24, 2021 claimant worked 54.56 hours and earned \$1,620.20 in wages. (Exhibit A3(3)). Claimant reported that she did not work that week and reported \$0.00 in wages. (KCCO). Claimant received her full unemployment benefit of \$493.00 for the week. (DBIN-1).

Employer reported for the week of July 25, 2021, through July 31, 2021 claimant worked 58.35 hours and earned \$1,769.43 in wages and was paid \$250.00 in bonus pay. (Exhibit A3(3)). Claimant reported that she did not work that week and reported \$0.00 in wages. (KCCO). Claimant received her full unemployment benefit of \$493.00 for the week. (DBIN-1).

Employer reported for the week of August 1, 2021, through August 7, 2021 claimant worked 13.42 hours and earned \$351.52 in wages. (Exhibit A3(3)). Claimant reported that she did not work that week and reported \$0.00 in wages. (KCCO). Claimant received her full unemployment benefit of \$493.00 for the week. (DBIN-1).

Employer reported for the week of August 15, 2021, through August 21, 2021 claimant worked 39.90 hours and earned \$1,045.38 in wages. (Exhibit A3(3)). Claimant reported that she did not work that week and reported \$0.00 in wages. (KCCO). Claimant received her full unemployment benefit of \$493.00 for the week. (DBIN-1).

Because the claimant did not report her wages IWD found claimant was an overpaid \$8,610.00 from March 7, 2021, through August 21, 2021. (Department exhibit A4(3)). The agency established the overpayment based upon the following incorrect state unemployment payments made to the claimant during the March 7, 2021 claim year due to claimant incorrectly reporting her wages: (Department exhibit A4(3-4))

WEEK ENDING	WAGES REPORTED	WAGES EARNED	BENEFITS PAID	BENEFITS ENTITLED	OVERPAYMENT
03/13/21	\$0.00	\$1,263.00	\$493.00	\$0.00	\$493.00
04/03/21	\$0.00	\$1,389.00	\$493.00	\$0.00	\$493.00
05/01/21	\$0.00	\$1,445.00	\$493.00	\$0.00	\$493.00
05/08/21	\$0.00	\$1,375.00	\$493.00	\$0.00	\$493.00
05/15/21	\$0.00	\$1,028.00	\$493.00	\$0.00	\$493.00
05/22/21	\$0.00	\$1,457.00	\$493.00	\$0.00	\$493.00
05/29/21	\$0.00	\$1,104.00	\$493.00	\$0.00	\$493.00
06/05/21	\$0.00	\$976.00	\$493.00	\$0.00	\$493.00
06/12/21	\$0.00	\$920.00	\$493.00	\$0.00	\$493.00
06/19/21	\$0.00	\$1,273.00	\$493.00	\$0.00	\$493.00
06/26/21	\$0.00	\$1,225.00	\$493.00	\$0.00	\$493.00
07/03/21	\$0.00	\$1,027.00	\$493.00	\$0.00	\$493.00
07/10/21	\$0.00	\$875.00	\$493.00	\$0.00	\$493.00
07/17/21	\$0.00	\$1,612.00	\$493.00	\$0.00	\$493.00
07/24/21	\$0.00	\$1,620.00	\$493.00	\$0.00	\$493.00
07/31/21	\$0.00	\$2,019.00	\$493.00	\$0.00	\$493.00
08/07/21	\$0.00	\$352.00	\$493.00	\$264.00	\$229.00
08/21/21	\$0.00	\$1,045.00	\$493.00	\$0.00	\$493.00
			SUBTOTAL:		\$8,610.00

In addition to the overpayment, a 15% and thirty-six month penalty was imposed to the overpayment due to the claimant's misrepresentation or intentional omission of wages in order to collect benefits.

Claimant provided records of the hours she worked beginning March 24, 2020 through December 21, 2021. (Exhibits 2 and 3). Claimant's exhibits reflect that she worked the hours reported by the employer from March 7, 2021 through September 4, 2021. (Exhibit 2 and 3).

Claimant testified she skimmed through the Claimant Handbook when she filed her initial application for unemployment insurance benefits. The online handbook for claimants provides that "you must report all gross wages and all gross earnings on the weekly claim." See Exhibit

B1(3). It further states that “wages are reported when earned, not when paid.” See Exhibit B1(3). The handbook also states: “There are circumstances when you should no longer be filing for unemployment insurance... You have returned to work full time working over 32 hours per week.” (Exhibit B1(4)).

The claimant handbook explains how to report earnings. (Exhibit B1(5)). Under the heading “Partially deductible from the benefit payment based on a formula” it explains that if you earn \$15.00 or more over your WBA (Weekly Benefit Amount) you will not receive a benefit payment for that week. This type of income includes: Wages, Holiday Pay... Tips, gratuities, commission, and incentive pay.” (B1(6)). Under the heading “Fully Deductible from the benefit payment” it states: each dollar you earn reduces your benefit payment by one dollar (dollar-for-dollar). Income that is 100% deductible includes: Vacation pay and paid time off and paid excused leave.” (Exhibit B1(6)).

The handbook also states under the heading Reactivating a Claim: “You can start and stop claiming unemployment insurance benefits as many times as necessary during the benefit year. This is called a break in reporting status. Any break in reporting requires you to refile your claim application online during the week you want to start collecting benefits again. Any employment during the break must be reported.” (Exhibit B1(4)).

The handbook alerts claimants to the consequences for providing false or fraudulent statements to collect benefits:

“Fraud is knowingly providing false information or withholding information to receive UI benefits. Fraudulently collecting UI benefits is a serious offense. It can lead to severe penalties, which include:

- criminal prosecution, fines, and imprisonment
- An overpayment of fraudulently collected unemployment insurance benefits that you must repay, plus a fifteen percent misrepresentation penalty and daily interest . . .
- Denial of benefits by administrative penalty, meaning you will be ineligible to receive future unemployment insurance benefits for anywhere from four weeks to the end of your benefits year, even after the overpayment is paid in full.” (Exhibit B1(2)).

When claimant’s state unemployment claim was expiring she received a notice she would be eligible for PEUC benefits. (PEUC letter dated August 3, 2020). Claimant contacted IWD and the IWD representative told claimant that if she wanted to be eligible for the benefits she would need to continue filing her weekly claim. Claimant testified that she was instructed to continue filing her weekly claims but to only report \$0.00 for the weeks in which she did not work. In each of her weekly claims she reported that she was not working and did not earn any wages. (KCCO).

Claimant continued to file for benefits when she was working for the employer because she thought she should be paid for additional weeks that she did not receive unemployment benefits. Claimant did not ask an IWD representative to backdate any of her weekly claims. Claimant was not instructed to file for benefits during weeks she was working to compensate her for weeks she was not paid unemployment benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was overpaid state unemployment benefits during the March 7, 2021 claim year.

Iowa Code section 96.1A(37) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

Iowa Admin. Code r. 871-24.18 provides:

Wage-earnings limitation. An individual who is partially unemployed may earn weekly a sum equal to the individual's weekly benefit amount plus \$15 before being disqualified for excessive earnings. If such individual earns less than the individual's weekly benefit amount plus \$15, the formula for wage deductions shall be a sum equal to the individual's weekly benefit amount less that part of wages, payable to the individual with respect to that week and rounded to the lower multiple of one dollar, in excess of one-fourth of the individual's weekly benefit amount.

This rule is intended to implement Iowa Code § 96.3, 96.4 and 96.1A(37).

Iowa Code section 96.3(7) provides, in pertinent part:

7. Recovery of overpayment of benefits.

Recovery of overpayment of benefits. 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 division of job service 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 division a sum equal to the overpayment.

The decision in this case rests, at least in part, on the credibility of the witnesses. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any

witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer's reporting of wages to be credible.

Under Iowa law a claimant is considered partially unemployed in any week when employed in their regular job the individual works less than their regular full-time week and earns less than the individual's weekly benefit amount plus fifteen dollars. See Iowa Code § 96.1A(37)(b)(1). When a claimant is partially employed and filing for unemployment benefits a claimant cannot earn wages, bonus pay, holiday pay, and or vacation pay that is more than their weekly benefit amount plus \$15.00. See Iowa Admin. Code r. 871-24.18. The claimant earned weekly gross wages, bonus pay, holiday pay, and/or vacation pay above her weekly-benefit amount, plus \$15.00, for the weeks ending: March 13, 2021; April 3, 2021; May 1, 2021; May 8, 2021; May 8, 2021; May 15, 2021; May 22, 2021; May 29, 2021; June 5, 2021; June 12, 2021; June 19, 2021; June 26, 2021; July 3, 2021; July 10, 2021; July 17, 2021; July 24, 2021; July 31, 2021; and August 21, 2021. These earnings were reportable for the purposes of deductibility from unemployment insurance benefits; however, the claimant failed to report these wages earned. As a result, claimant is overpaid the full benefit amount for each of these weeks.

For the week ending August 7, 2021, claimant was partially unemployed and, thus, eligible for partial benefits. Claimant received wages of \$351.52. As a result Claimant was only entitled to a partial benefit payment of \$264.00, according to the following calculation:

$$\begin{aligned} \$352.00 \text{ (wages)} - \$123.00 \text{ (25\% of WBA)} &= \$229.00 \text{ (wage deduction)} \\ 4930.00 \text{ (WBA)} - \$229.00 \text{ (wage deduction)} &= \$264.00 \text{ (partial weekly benefit amount)} \end{aligned}$$

Claimant received the full weekly benefit amount of \$500.00 for the week. Since claimant was only entitled to receive \$264.00 in state unemployment benefits she has been overpaid \$229.00 for the week ending August 7, 2021.

In total claimant was overpaid seventeen weeks of full benefits with a gross total of \$8,381.00 for weeks between March 7, 2021, and August 21, 2021. Claimant was overpaid \$229.00 in gross benefits for one week during the week ending August 7, 2021. The claimant was overpaid a gross total of \$8,610.00 in state unemployment benefits. The administrative law judge concludes the claimant was overpaid benefits and 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 § 96.5(8).

Iowa Code section 96.16(1) provides:

Penalties. An individual who makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, to obtain or increase any benefit or other payment under this chapter, either for the individual or for any other individual, is guilty of a fraudulent practice as defined in sections 714.8 to 714.14.

Iowa Code section 96.16(4)(a) and (b) provide in pertinent 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, 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.
 - 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.

Iowa Admin. Code r. 871- 25.1 provides the following definition of "fraud":

[T]he 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.

Iowa Admin. Code r. 871- 25.1 defines "misrepresentation" as "to give misleading or deceiving information to or omit material information; to present or represent in a manner at odds with the truth."

The administrative law judge is persuaded the claimant knew or should have known she must report all wages earned each week that she sought to claim unemployment insurance benefits. The claimant reported she did not perform work or earn wages each of the weeks she filed for benefits. This was blatantly false. The employer's records show claimant performed work for the employer the weeks ending March 13, 2021; April 3, 2021; May 1, 2021, and each consecutive week through August 7, 2021. (Exhibit A3(3)). The employer also reported claimant performed work for them the week ending August 21, 2021. (Exhibit A3(3)). The claimant knew she worked and knew she had earned wages. This misrepresentation allowed the claimant to collect both wages and state unemployment insurance benefits during eighteen different weeks when she received state unemployment benefits for the March 7, 2021 claim year.

It is unclear why claimant filed a new unemployment claim for the week beginning March 7, 2021 when she was still working full-time. Claimant reported on her weekly filing she did not work and did not earn any wages. Claimant's reason for continuing to file for benefits and not report her wages was because she did not get paid for some of the weeks she was entitled to state unemployment benefits. Claimant was not told by an IWD representative to file for benefits to make up for weeks she believed she was not compensated for state unemployment benefits. This is not the proper procedure to request to back date weekly claims, furthermore, claimant was compensated every week she filed for benefits and she received her payment each week. It is unclear why claimant believes she was entitled to additional weeks of unemployment benefits.

The administrative law judge concludes the claimant knowingly omitted material information to IWD when she reported that she had not worked each week and failed to correctly report wages earned. Claimant's repeated and intentional concealment of wages is an intentional misrepresentation that led to claimant receiving unemployment insurance benefits she was not entitled to receive. Accordingly, the administrative law judge concludes the overpayment was correctly calculated and the application of a 15% penalty due to misrepresentation was warranted.

DECISION:

The January 14, 2022 (reference 01) unemployment insurance decision is AFFIRMED. Claimant was overpaid regular unemployment insurance benefits in the amount of \$8,610.00 for eighteen weeks between the weeks ending March 13, 2021 and August 21, 2021 and is required to repay the agency this overpayment balance. The claimant engaged in misrepresentation and IWD properly imposed the administrative penalties. The 15% penalty due to misrepresentation must be repaid in addition to claimant's overpayment amount.



Carly Smith
Administrative Law Judge

November 8, 2022
Decision Dated and Mailed

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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
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: 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**

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 adquiriera 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.