

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

MICHAEL D HEAD

Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL 22A-UI-16184-S2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/24/20
Claimant: Appellant (1)**

Iowa Code § 96.3(7) - Recovery of Benefit Overpayment – Lost Wages Assistance Program
Iowa Code § 96.3(7) – Overpayment of Benefits
Iowa Code § 96.16(4) – Offenses and Misrepresentation
Iowa Admin. Code r. 871-25.1 – Misrepresentation & Fraud

STATEMENT OF THE CASE:

On August 17, 2022, the claimant filed an appeal from the August 12, 2022 (reference 07) unemployment insurance decision which concluded the claimant was overpaid Lost Wages Assistance Program (LWAP) benefits in the amount of \$1,800.00, because he failed to accurately report earnings with 5th Judicial District while concurrently filing weekly claims for unemployment insurance benefits. Iowa Workforce Development (IWD) also imposed a 15% administrative penalty due to misrepresentation.

The parties were properly notified of the hearing. A telephone hearing was held on September 15, 2022, and was consolidated with the hearing for appeal numbers 22A-UI-16180-S2-T, 22A-UI-16181-S2-T, 22A-UI-16182-S2-T, 22A-UI-16185-S2-T, and 22A-UI-16186-S2-T. Claimant Michael D. Head participated and testified. Claudia Young-Head testified on behalf of the claimant. Iowa Workforce Development (IWD) participated through Daniel Noonan. IWD submitted Exhibits 1 through 11, which were admitted into the record. The administrative law judge took official notice of the administrative record.

ISSUES:

Did IWD correctly determine that claimant was overpaid LWAP benefits and was the overpayment amount correctly calculated?

Did IWD properly impose a penalty based on claimant's misrepresentation?

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 May 24, 2020. Claimant's weekly benefit amount was \$500.00. Claimant filed weekly continuing claims beginning the week of May 24, 2020, and continuing consecutively until June 12, 2021. He received regular unemployment insurance benefits funded by the State of Iowa in the amount of \$13,000.00 from May 24, 2020, through November 21, 2020, when he

reached his maximum benefit amount. Claimant was then paid Federal Pandemic Emergency Unemployment Compensation (PEUC) benefits in the amount of \$14,500.00, from November 22, 2020, through June 12, 2021. Claimant was paid Federal Pandemic Unemployment Compensation (FPUC) benefits in the amount of \$5,400.00 between May 24, 2020, and July 25, 2020, and \$7,200.00 between December 27, 2020, and June 12, 2021. Claimant was paid Lost Wages Assistance Program (LWAP) benefits in the amount of \$1,800.00 for the six-week period between July 26, 2020, and September 5, 2020. Claimant was found to be ineligible for regular state unemployment insurance benefits in a reference 04 decision dated August 12, 2022. That decision has been affirmed. See 22A-UI-16180-S2-T.

In May 2020, claimant was working for 5th Judicial District and Midwest Maintenance. 5th Judicial District paid claimant \$23.28 per hour. Claimant worked 40 hours per week, and on occasion, worked overtime hours when they were made available. Claimant was laid off from his part-time position with Midwest Maintenance, and this is why he began filing for benefits. Claimant worked for Midwest as a part-time custodian. Claimant earned \$10.25 per hour and worked an average of 8 hours per week. See Exhibit 2.

IWD conducted an audit and discovered that claimant was working and received wages from 5th Judicial district during the weeks in which he was filing his continuing claims for benefits between May 24, 2020, and June 12, 2021, but did not report wages earned any of those weeks. IWD contacted 5th Judicial District to verify the claimant's wages earned during that time period. The employer confirmed the hours claimant performed work and was paid wages during the weeks between May 24, 2020, and June 12, 2021. As a result of the employer's verification of wages, Investigator Daniel Noonan scheduled a phone call with claimant. Claimant did participate in the phone call.

Beginning May 24, 2020, for each week in which claimant filed weekly continuing claims for benefits, he earned wages, vacation pay, or holiday pay in excess of her weekly benefit amount, plus \$15.00. See Exhibit 2. Because claimant did not accurately report his wages, an overpayment of \$12,600.00 was determined by IWD. In addition to the overpayment, a 15% penalty was imposed, due to the overpayment arising from the claimant's misrepresentation or intentional omission of wages to collect benefits.

Even though all claimants who file a claim online are offered and agree to read the Unemployment Insurance Handbook, claimant did not recall doing so. The Unemployment Insurance 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 don't understand the information in the handbook. Claimant did not contact IWD for assistance or clarification during the period of time he filed for benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes IWD did correctly establish and calculate the claimant's overpayment of LWAP benefits.

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.

Here, it is undisputed that claimant earned weekly gross wages, vacation pay, or holiday pay above his weekly benefit amount, plus \$15.00, week for his work at 5th Judicial District. Claimant failed to report these wages during any week he filed for benefits.

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.

Iowa Code § 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.

If claimant would have properly reported his wages from 5th Judicial District, he would not have been paid regular unemployment benefits or PEUC for the weeks in which he filed his weekly continuing claims for benefits because his gross wages exceeded his weekly benefit amount, plus \$15.00 each week. Because claimant was not eligible for regular unemployment insurance benefits or PEUC benefits for any of the weeks in which he filed weekly continuing claims, he was also not eligible for the supplemental LWAP payments for those weeks. As such, the amount of overpayment determined of \$1,800.00 in LWAP benefits for the weeks between July 26, 2020, and September 5, 2020, is correct.

The final 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 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

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.*

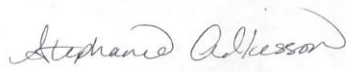
Claimant testified during the investigation that he always reported his wages from 5th Judicial District. However, if claimant had done so he would not have been eligible for benefits as he was working full time hours earning in excess of his weekly benefit amount plus \$15.00. During the hearing, claimant testified that he did not believe he needed to report his earned wages from his full-time employer because he was filing for benefits as a result of being laid off from his part-time employer. Later during the hearing claimant testified that he did not accurately report his wages because he suffers from a medical condition that causes a psychosis break. He testified he must have been having one during the 55 weeks he filed for benefits. Claimant indicated this condition renders him able to do some things but not other things. For example, claimant testified he was able perform his work duties without any issues, but this medical condition affected his ability to accurately report his wages earned when filing his claim for benefits each week. The administrative law judge finds that claimant is not a credible witness. First, he gave three different conflicting explanations regarding the reporting or lack thereof of his weekly earnings; first that he did report his wages, then that he did not think he had to report them because he was filing due to the loss of his part-time job, and third, that his medical condition prohibited him from accurately reporting the wages he earned from his full-time position. His shifting reasons make him less credible. Second, his testimony that a medical condition that rendered him unable to accurately enter his earnings each week is implausible. It is unlikely that claimant would be able to successfully complete every other portion of filing a weekly claim, except for the portion asking for his wages earned each week.

Based on the evidence presented, the administrative law judge concludes the claimant knowingly omitted material information to IWD when he failed to correctly report wages earned from 5th Judicial District when he filed for unemployment insurance benefits. When claimant initially began filing for benefits, he was receiving \$1,100.00 in gross benefits each week. Even after taxes, claimant received \$935.00 each week in benefits for the first several months. Claimant did not find it to be unusual or feel that he should reach out to IWD to inquire why he received benefits totaling \$1,100.00 each week in benefits after losing a position where he earned on average \$82.00 per week.

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 and concurrently filed for and received 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.

DECISION:

The August 12, 2022 (reference 07) decision is affirmed. Claimant was overpaid LWAP benefits in the amount of \$1,800.00 for the weeks between July 26, 2020, and July 25, 2020, and those benefits must be repaid. IWD correctly imposed the administrative penalty due to the claimant's misrepresentation, which must be repaid as well.



Stephanie Adkisson
Administrative Law Judge

October 7, 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.