

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

WAYNE A CASSAVOY

Claimant

APPEAL 19R-UI-06791-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 12/23/18

Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timeliness of Appeal
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 July 8, 2019, Wayne A. Cassavoy (claimant/appellant) filed an appeal from the June 17, 2019, reference 02, unemployment insurance decision which concluded he was overpaid unemployment insurance benefits and the overpayment was subject to a 15% administrative penalty due to misrepresentation because he reported he was able to and available for work while in jail when filing weekly claims for unemployment insurance benefits. After due notice was issued, a telephone conference hearing was held on September 19, 2019 and consolidated with the hearing for appeal 19R-UI-06790-SC-T. The claimant participated. Iowa Workforce Development (IWD) participated through Investigator Kasandra Ellenwood. The department's Exhibits C through K were admitted without objection.

ISSUES:

Is the claimant's appeal timely?

Did IWD correctly determine that the claimant was overpaid unemployment insurance benefits, and was the overpayment amount correctly calculated?

Did IWD properly impose a penalty based upon the 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 December 23, 2018. When the claim was established, the claimant was directed to read the Unemployment Insurance Handbook. (Department Exhibit J). 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. (Department Exhibit I).

With respect to “Ability to Work and Available for Work,” the handbook states:

Individuals must be able and available for work while claiming benefits. It is important to notify IWD of any condition or situation which would prevent the individual from working, accepting work, or looking for work the majority of the week. These situations may include, but are not limited to:

- Illness, injury, or hospitalization
- Being in jail
- Attending school
- Being on vacation or out of town
- No childcare
- No transportation

Individuals should contact IWD to report any changes that could affect their benefits. (Department Exhibit I-7).

The handbook also provides in part:

Overpayment

Individuals are responsible for repaying any benefits they were not eligible to receive. Future UI benefit payments are withheld until the non-fraud overpayment has been recovered in full. If the individual is not making attempts to repay the overpayment, the debt may be recovered by withholding state and federal tax refunds, casino and lottery winnings, and vendor payments. Overpayments caused by fraud include a 15% penalty. All overpayments are assessed interest of 1/30th of a percent per day until the debt is paid in full. Individuals with fraud debt are not eligible to receive benefits until the debt, including penalty, interest and fees have been paid in full. (Department Exhibit I-5).

The handbook also alerts claimants to 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
- Denial of future benefits by administrative penalty
- Repayment of fraudulently collected UI benefits, plus a 15 percent penalty and daily interest
- Wage garnishments and liens
- Interception of state and federal tax refunds

(Department’s Exhibit I-3)

In addition, each week the claimant would complete a weekly continued claim, he would see a screen online which provided:

It is important that you answer all questions truthfully.

WARNING: Attempting to claim and receive unemployment insurance benefits by entering false information can result in loss of benefits, fines and imprisonment.

Before completing his weekly continued claim each week, the claimant had to check a box that stated he understood the warning message above and wished to proceed. (Department Exhibit K).

IWD conducted an audit and discovered that the claimant was in jail from January 3, 2019 through February 10, 2019. During that time period, the claimant continued to file for benefits and reported as willing and able to work. (Department Exhibit D). As part of the audit, Investigator Kasandra Ellenwood contacted the claimant. She mailed a preliminary audit on May 10, 2019, which stated he may have been overpaid benefits in the amount of \$2,802.00, for incorrectly reporting he was available for work while in jail. (Department Exhibit D). The letter also informed him that an overpayment may result in consequences including a 15% penalty. (Department Exhibit D).

The claimant spoke to Ellenwood on May 17 in response to the letter. The claimant acknowledged he was in jail and filed his claim for benefits. He used a guard's cell phone to make his weekly continued claims. The claimant stated he reported that he was available for work because the employer had not called him back to work, there was no work available at the union hall, and he could have arranged for work release, if needed.

The claimant's weekly benefit amount was \$467.00. (Department Exhibit D-2). Because the claimant did not accurately report his ability to and availability for work during the relevant time period, an overpayment of \$2,802.00 was determined by IWD. (Department Exhibit D-2). The agency established the overpayment based upon the following incorrect payments made to the claimant:

WEEK ENDING	WAGES REPORTED	WAGES EARNED	BENEFITS PAID	BENEFITS ENTITLED	OVERPAYMENT
01/05/19			467.00	0.00	467.00
01/12/19			467.00	0.00	467.00
01/19/19			467.00	0.00	467.00
01/26/19			467.00	0.00	467.00
02/02/19			467.00	0.00	467.00
02/09/19			467.00	0.00	467.00
			SUBTOTAL:		2,802.00
			NET TOTAL		

(Department Exhibit D-2). In addition to the overpayment, a 15% penalty in the amount of \$420.30 was imposed, due to the overpayment arising from the claimant's misrepresentation of his availability for work or intentional omission of the fact he was in jail. The claimant's total overpayment is \$3,222.30. (Department's Exhibit G)

The unemployment insurance decision was mailed to the claimant's address of record on June 14, 2019. The claimant did not receive that decision. He had a follow-up conversation with Ellenwood on June 28 and notified her that he had not received the decision due to a change of address. Ellenwood mailed a copy of the decision to the claimant's new address. The claimant's appeal was filed on July 8.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal is timely, 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.

I. Is the claimant's appeal timely?

Iowa Code section 96.6(2) provides, in pertinent part:

Filing – determination – appeal.

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. . . . 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.

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

The claimant did not have an opportunity to appeal the investigator's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant discovered the disqualification on June 28 when he spoke to Ellenwood and filed his appeal within ten days of notification. Therefore, the appeal shall be accepted as timely.

II. Did IWD correctly determine that the claimant was overpaid unemployment insurance benefits, and was the overpayment amount correctly calculated?

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.

The claimant was overpaid due to the decision that disqualified him for benefits based on the determination he was not able to or available for work from December 30, 2018 through February 9, 2019 as he was in jail. The decision that disqualified the claimant has been affirmed by the administrative law judge in the decision for appeal 19R-UI-06790-SC-T. As the claimant has been found ineligible for benefits, he has been overpaid unemployment insurance benefits in the amount of \$2,802.00 which must be repaid. The overpayment was correctly calculated.

III. Did IWD properly impose a penalty based upon the claimant's misrepresentation?

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 claimant knowingly omitted material information to IWD when he filed for unemployment insurance benefits. On six separate occasions, the claimant reported he was able to and available for work while in jail. This was blatantly false. The claimant's repeated and intentional false reporting led to him receiving an overpayment of unemployment insurance benefits.

Therefore, the calculated overpayment was correct, and the claimant knowingly omitted material information to IWD when he failed to report he was not available for work and concurrently filed for unemployment insurance benefits. Accordingly, the overpayment was correctly calculated and the application of a 15% penalty due to misrepresentation was warranted.

DECISION:

The claimant's appeal is timely. The June 17, 2019, reference 02, unemployment insurance decision is affirmed. The claimant was overpaid benefits. IWD correctly imposed the administrative penalty due to the claimant's misrepresentation.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/rvs