

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KENDDY S THOMAS
Claimant

APPEAL NO. 20A-UI-03947-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
INVESTIGATIONS & RECOVERY**

OC: 04/05/20
Claimant: Appellant (1)

Iowa Code Sections 96.16(4) & 96.5(13) – Unpaid Fraud Overpayment Balance

STATEMENT OF THE CASE:

Kenddy Thomas filed a timely appeal from the May 11, 2020, reference 01, decision that denied benefits in connection with the April 5, 2020 original claim, based on the Agency representative's determination that Mr. Thomas owes an unpaid fraud overpayment balance and could not receive benefits until the entire fraud overpayment balance, including penalty, interest and lien fees, was paid. After due notice was issued, a hearing was held on May 29, 2020. Mr. Thomas participated. Sean Clark, Investigator, Iowa Workforce Development Investigations & Recovery Bureau, submitted a written summary and exhibits in lieu of personally participating in the appeal hearing. Exhibits 1 through 7 and A were received into evidence.

ISSUE:

Whether Mr. Thomas owes an unpaid fraud overpayment balance that precludes him from receiving unemployment insurance benefits until the entire fraud overpayment balance, including penalty, interest and lien fees, is paid.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Kenddy Thomas established an original claim for benefits that was effective April 5, 2020. At the time Mr. Thomas established the original claim, he had an outstanding balance of \$10,134.91 that he still owed in connection with an October 17, 2011, reference 04, final agency decision that held he was overpaid \$12,657.22 for 48 weeks between April 4, 2010 and March 5, 2011, because he failed to report wages earned with Nationwide Mutual Insurance. The overpayment decision cited Iowa Code section 96.16(4), as the legal authority for the decision. Ms. Thomas concedes the unpaid fraud-based overpayment balance. Mr. Thomas cites the economic circumstances surrounding the current COVID-19 pandemic as a basis for requesting leniency and temporary waiver of the repayment requirement so that he can receive unemployment insurance benefits in connection with the April 5, 2020 original claim.

REASONING AND CONCLUSIONS OF LAW:

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

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.

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.

Iowa Code section 96.5(13) explicitly bars Mr. Thomas from receiving any unemployment insurance benefits until the balance of the outstanding fraud-based overpayment, including penalties, interest, and lien fees, are paid in full. Mr. Thomas still owes \$10,134.91 on that outstanding obligation. Under the plain language of the statute, the administrative law judge has no legal authority to waive the repayment requirement so that Mr. Thomas can receive benefits to help with his current economic circumstances. Mr. Thomas must repay the entire fraud-based overpayment balance, including penalty, interest and lien fees before he may receive unemployment insurance benefits.

DECISION:

The May 11, 2020, reference 01, decision is affirmed. The claimant is disqualified for unemployment insurance benefits because he owes an unpaid fraud-based overpayment balance. The claimant cannot receive benefits until the entire fraud overpayment balance, including penalty, interest and lien fees, is paid.

A handwritten signature in black ink that reads "James E. Timberland". The signature is written in a cursive, flowing style.

James E. Timberland
Administrative Law Judge

June 30, 2020
Decision Dated and Mailed

jet/scn