

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

**TIFFANIE M GRIMM**  
Claimant

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**APPEAL 22A-UI-19437-S2-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/29/20**  
**Claimant: Appellant (4)**

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 November 1, 2022, the claimant filed an appeal from the October 27, 2022 (reference 01) unemployment insurance decision which concluded claimant was overpaid unemployment insurance benefits because she failed to accurately report earnings 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 January 3, 2023. Claimant Tiffanie M. Grimm participated and was represented by attorney Marlon Mormann. Witness Melissa Bennett testified on behalf of claimant. Debbie Rumbaugh and Daniel Noonan participated on behalf of IWD. IWD was represented by attorney Jeffrey Koncsol. Claimant's Exhibits 1 – 3 were admitted. IWD Exhibits 1 – 12 were admitted. The administrative law judge took official notice of the administrative record. The hearing for the following appeal numbers was consolidated, which created one record: 22A-UI-19434-S2-T, 22A-UI-19435-S2-T, 22A-UI-19436-S2-T, 22A-UI-19438-S2-T, 22A-UI-19439-S2-T, 22A-UI-19440-S2-T, and 22A-UI-19441-S2-T.

**ISSUES:**

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: Claimant filed a claim for unemployment insurance benefits with an effective date of March 29, 2020. Her weekly benefit amount was \$500.00 based on the wages reported in the base period. Claimant filed weekly continuing claims beginning the week of March 29, 2020, and continuing through the week that ended March 27, 2021. Claimant received regular unemployment insurance benefits funded by the State of Iowa in the gross amount of \$13,000.00 from March 29, 2020,

through September 26, 2020, when she exhausted her maximum benefit amount. Claimant also received Pandemic Emergency Unemployment Compensation (PEUC) benefits in the amount of \$13,000.00 for the 26-week period between September 27, 2020, and March 27, 2021. Claimant received Federal Pandemic Unemployment Compensation (FPUC) benefits in the amount of \$10,200.00 for a 17-week period between March 29, 2020, and July 25, 2020, and \$3,900.00 for a 13-week period between December 27, 2020, and March 27, 2021. Claimant received 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 filed a claim for unemployment insurance benefits for a second benefit year with an effective date of March 28, 2021. Her weekly benefit amount was \$531.00 during the claim year effective March 28, 2021. Claimant received regular unemployment insurance benefits funded by the State of Iowa in the gross amount of \$5,841.00 from March 29, 2020, through October 31, 2021. Claimant received FPUC benefits in the amount of \$3,300.00 for an 11-week period between March 28, 2021, and June 12, 2021.

All claimants who file a claim online are offered and agree to read the Unemployment Insurance Handbook. Claimant did read the handbook. 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 do not understand the information in the handbook.

With respect to "Reporting Earnings," the handbook states:

Gross earnings or gross wages are your earnings before taxes or other payroll deductions are made. Earnings or wages must be reported on the weekly claim during the week the wages are earned, not when the wages are paid. Earnings must be reported even if the payment has not been received yet. To calculate the amount to report, the individual should multiply the number of hours worked by the hourly wage. Individuals should report the full gross amount of earnings and IWD will calculate any deductions. If an individual earns \$15 or more over their WBA, they will not receive a benefit payment

The handbook also provides in part:

**Preparing to File a Weekly Claim**

Individuals should have the following information available when filing their weekly claim:

- SSN
- PIN
- Total amount of gross wages (before deductions) earned during the week
- Total amount of gross holiday pay, gross vacation and severance, if applicable

To calculate gross earnings, multiply the number of hours worked (Sunday through Saturday) times the rate of pay. Example: 10 hours X \$12.00/hour = \$120.00 in gross earnings

In addition, each week the claimant would complete a weekly continued claim online, she 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.

In March 2020, claimant was working full time for Businessolvers.com. Businessolvers.com paid claimant \$22.28 per hour through October 2020, at which point she began earning \$24.76 per hour. Claimant received a promotion to manager on March 8, 2021, and began earning \$57,862.56 annually. During the time claimant filed for unemployment insurance benefits, she earned between \$865.00 and \$1,112.00 in gross wages each week.

Claimant worked part time for MBMH Corporation as a marketing design manager and event coordinator. She worked 15-20 hours per week and earned approximately \$200.00 dollars in gross wages each week. In March 2020, claimant was laid off due to the COVID-19 pandemic due to a lack of work. She remained off work from MBMH Corporation until June 13, 2021. Claimant's supervisor and claimant contacted IWD to inquire whether claimant could file for unemployment insurance benefits after losing her part-time position, even though she continued to work her regular full-time position with Businessolvers.com. An IWD representative told both claimant and her supervisor that she could file for benefits while continuing to work her full-time job, so claimant filed her claim effective March 29, 2020.

Each week when a claimant files online, they are asked "did you work?" Claimant was not asked whether she worked for a specific employer or whether she worked for the employer she was "filing against." Each week, claimant reported that she did not work and earned no wages. Each week, claimant attested that she was telling the truth and was notified of possible penalties for misrepresentation.

As a result of a wage crossmatch, IWD conducted an audit and discovered that claimant received wages from Businessolver.com between March 29, 2020, and June 12, 2021, but reported earning no wages. IWD contacted Businessolver.com to verify the claimant's wages earned during that time period. Businessolver.com confirmed the hours claimant performed work and was paid wages during the weeks between March 29, 2020, and June 12, 2021. The audit indicated that claimant was not eligible to receive any unemployment insurance benefits because her weekly wages exceeded her weekly benefit amount, plus \$15, for each week in which she filed claims for benefits.

As a result of employer's verification of wages, Investigator Debbie Rumbaugh notified claimant of an investigation and scheduled an interview for October 25, 2022. Claimant participated in the interview. Claimant does not dispute the wage amounts Businessolver.com reported. She did not report wages earned with Businessolver.com because she believed he was "filing against" MBMH Corporation.

Because the claimant did not accurately report her wages, an overpayment of \$13,000.00 for the twenty-six weeks between March 29, 2020, and September 26, 2020, was determined by IWD in an October 27, 2022 (reference 01) decision. The agency established the overpayment based upon the incorrect payments made to the claimant: 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.

## **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 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, claimant collected both wages and unemployment insurance benefits during each week she filed for benefits.. Claimant inaccurately reported wages during those weeks. Claimant earned wages in excess of her weekly benefits amount plus \$15.00. As a result, the claimant was overpaid benefits in the amount of \$13,000.00, to which she was not entitled. The administrative law judge concludes 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 section 96.5(8).

Iowa Code section 96.16(1) provides (emphasis added):

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 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.

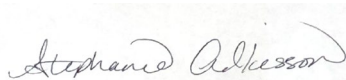
"Fraud" means the intentional misuse of facts or truth to obtain or increase unemployment insurance benefits for oneself or another or to avoid the verification and payment of employment security taxes; a false representation of a matter of fact, whether by statement or by conduct, by false or misleading 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

Claimant credibly testified that she did not understand that she was required to report her wages from her full-time employer. She believed she was filing for benefits against one employer only, MBMH Corporation. Notwithstanding the instructions in the handbook, there is no evidence that claimant willfully or knowingly failed to report her wages. Therefore, the 15% penalty was not properly imposed.

#### **DECISION:**

The October 27, 2022 (reference 01) unemployment insurance decision is modified in favor of the appellant. Claimant was overpaid \$13,000.00 in regular unemployment insurance benefits, which must be repaid. There is no evidence that claimant engaged in misrepresentation. The 15% penalty is removed.



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Stephanie Adkisson  
Administrative Law Judge

January 5, 2023  
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  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://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](http://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.