

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROBERT D CLARK
Claimant

APPEAL 18A-UI-02644-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 01/08/17
Claimant: Appellant (1)

Iowa Code § 96.3(7) – Overpayment of Benefits

STATEMENT OF THE CASE:

The claimant/appellant, Robert D. Clark, filed an appeal from the February 15, 2018 (reference 02) Iowa Workforce Development (“IWD”) unemployment insurance decision which concluded the claimant was overpaid unemployment insurance benefits because he failed to accurately report earnings from White Construction Inc. No administrative penalty was imposed.

The parties were properly notified of the hearing. A telephone hearing was held on March 27, 2018. The claimant, Robert D. Clark, participated personally. Michelle Clark, wife of claimant, also testified. Kristin Woody, Investigator, participated on behalf of IWD. Department Exhibits 1 through 12 were admitted. The administrative law judge took official notice of the claimant’s unemployment insurance benefits records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

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 January 8, 2017, in response to a temporary reduction in hours from White Construction Inc.

When the claim was filed, the claimant was given the option of reading the Unemployment Insurance Handbook online or a mailed hardcopy. When he filed his claim, he agreed that he would read and understand the handbook. The claimant stated he did not read the handbook, noting he had filed claims for several years without issue. The claimant’s wife, Michelle Clark, established the claimant’s unemployment insurance claim online, and makes his weekly continued claims for him. She did not read the claimant handbook either.

The Unemployment Insurance Handbook includes instructions for properly filing claims and informs claimants that failure to follow the instructions in the handbook may lead to an improper payment of benefits that must be paid back (Department Exhibit 5). 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 5).

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

Gross earnings/wages (before tax and payroll deductions) 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 \$15.00 over their WBA, they will not receive a benefit payment

The handbook also states in relevant part:

Individuals must keep their PIN confidential and should never let anyone file their weekly claim on their behalf.

IWD conducted an audit and discovered that Mr. Clark received wages from White Construction Inc. for three weeks, but failed to accurately report the wages. The three weeks originally audited were the weeks ending January 14, 2017, April 8, 2017 and April 15, 2017 (Department Exhibit 1, 3). IWD initially contacted the employer to verify the claimant's wages earned with the employer, (Department Exhibit 1,3). After the initial audit, the weeks in question were amended to January 14, 2017 and April 15, 2017 only (Department Exhibit 3). For the week ending January 14, 2017, the claimant (through Mrs. Clark, who filed his claim), reported he earned \$400.00 for the week ending January 14, 2017, and \$246.00 for the week ending April 15, 2017 (Department Exhibit 6, 7). The employer reported the claimant's gross wages to be \$1,959.65 for the week ending January 14, 2017 and \$2,651.00 for the week ending April 15, 2017 (Department Exhibit 1, 3).

As a result of the employer's verification of wages, Investigator Kristin Woody, also contacted the claimant. The claimant was mailed a notice to report on January 16, 2018, which stated he may have been overpaid benefits for failing to report wages (Department Exhibit 10). The claimant and his wife, Mrs. Clark, responded to the audit (Department Exhibit 11).

The claimant disputed the wages reported for both weeks by the employer. He insisted his wife would not file a claim for the week ending January 14, 2017, because he worked through January 13, 2017, before being laid off. However, administrative records and an interview with Ms. Woody confirm that due to some confusion by Ms. Clark, she did file a weekly continued claim for the claimant for the week ending January 14, 2017 (Department Exhibit 11).

The claimant further stated it would be impossible to work 60 hours in one week as reported by the employer. The claimant did not provide any pay stubs to Ms. Woody during the investigation, or the Appeals Bureau, to confirm the hours/wages earned for the two weeks in question. Both the claimant and his wife reiterated how unhappy they were with the overpayment (Department Exhibit 11), and Mrs. Clark asserted IWD should have contacted them sooner if there was an issue.

The claimant's weekly benefit amount was \$447.00 (Department Exhibit 9). Because the claimant did not accurately report his wages during this same period, an overpayment of \$470.00 was determined by IWD (Department Exhibit 9). The agency established the overpayment based upon the following incorrect payments made to the claimant: (Department Exhibit 6, 9).

WEEK ENDING	WAGES REPORTED	WAGES EARNED	BENEFITS PAID	BENEFITS ENTITLED	UNDERPAYMENT
01/14/17	\$400.00	\$1,960.00	\$158.00	\$0.00	\$158.00
04/15/17	\$246.00	\$1,648.00	\$312.00	\$0.00	\$312.00
					TOTAL: \$470.00

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes IWD did correctly determine the claimant had been overpaid benefits, and correctly calculated the claimant's overpayment of benefits.

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 administrative law judge is persuaded the claimant knew or should have known he must report all wages earned each week that he sought to claim unemployment insurance benefits, and that failure to properly do so, could result in an overpayment, which he must repay (Department Exhibit 5). When the claim was filed, the claimant was required to read the Unemployment Insurance Handbook online, or request and read a mailed copy. The Unemployment Insurance Handbook includes instructions for properly filing claims and informs claimants that they should call IWD customer service for help if they don't understand the information in the handbook (Department Exhibit 5).

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.*

Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the claimant did not report all wages earned for the week ending January 14, 2017 and the week ending April 15, 2017 (Department Exhibit 1,3, 6, 7). The claimant is reminded that he may receive assistance in filing of his claim through family, but that he is ultimately responsible for his claim being accurately and successfully transmitted each week he seeks to claim benefits.

The claimant did not present evidence such as a paystub either to Investigator Woody, or for the hearing that established the wages reported by the employer for the two weeks at issue were incorrect. Cognizant of the claimant and his wife's frustration, and while not intentional, the credible evidence presented establishes that due to incorrect wages being reported with weekly continued claims, by the claimant (through his wife), he was overpaid benefits in the amount of \$470.00 to which he was not entitled (Department Exhibit 9). The administrative law judge concludes therefore, that the overpayment was appropriate and correctly calculated.

DECISION:

The February 15, 2018 (reference 02) unemployment insurance decision is affirmed. The claimant was overpaid benefits in the amount of \$470.00 for not correctly reporting his wages, which must be repaid.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn