

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CORTEZ MILLER
Claimant

APPEAL 20A-UI-04135-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA WORKFORCE DEVELOPMENT

OC: 03/15/20
Claimant: Appellant (1)

Iowa Code § 96.5(13) – Disqualification due to Outstanding Fraud Overpayment
Iowa Code § 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 1, 2020 (reference 03) Iowa Workforce Development (“IWD”) unemployment insurance decision that found the claimant was not eligible for unemployment insurance benefits due to an outstanding fraud overpayment balance. The parties were properly notified of the hearing. A telephone hearing was held on June 3, 2020. The claimant participated in the hearing. The Department did not participate. Department’s Exhibit D-1 was admitted into evidence.

ISSUE:

Whether the claimant’s appeal is timely and whether he is ineligible for benefits due to an outstanding fraud overpayment balance.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the claimant’s last known address of record on April 1, 2020. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by April 11, 2020. That date fell on a Saturday so the appeal was actually due on April 13, 2020. The appeal was not filed until May 16, 2020, which is after the date noticed on the disqualification decision. The claimant’s appeal was late because a representative from the department called the claimant and said he was eligible for benefits and he did not realize he needed to file an appeal from the reference 03 decision. Under these circumstances, the administrative law judge finds the claimant’s appeal is timely.

The claimant filed a claim for unemployment insurance benefits with an effective date of December 21, 2014. During that claim year, a decision was issued on November 6, 2015, which found that the claimant was overpaid benefits of \$1,273.00, including interest and a 15% penalty due to fraud. The claimant did not appeal the decision and it became final.

To date, claimant has failed to pay the outstanding overpayment amount owed, including interest, penalties, and lien fees. The current outstanding balance owed is \$1,463.95, due to a 15% penalty.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not eligible for benefits until the balance of the benefits received by the claimant due to misrepresentation, including all penalties, interest, and lien fees are paid in full. Benefits are denied at this time.

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.

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.*

The claimant's testimony was not corroborated by any documents or witnesses. While the claimant was credible, the administrative law judge finds the administrative record establishes the claimant has an overpayment that has been attributable to fraud and that decision has become final.

The claimant currently owes a balance of \$1,463.95 due to a decision issued on November 6, 2015, which found that the claimant failed to report or incorrectly reported wages, resulting in a determination that the claimant engaged in misrepresentation pursuant to Iowa Code § 96.16(4). Because this fraud balance remains unpaid, the claimant is not eligible for benefits at this time. See Iowa Code § 96.5(13).

DECISION:

The April 1, 2020 (reference 03) unemployment insurance decision is affirmed. The claimant is not eligible for benefits. Benefits are withheld until the claimant has paid the unpaid fraud overpayment balance, plus penalties, interest, and lien fees, provided the claimant is otherwise eligible.



Julie Elder
Administrative Law Judge

June 23, 2020
Decision Dated and Mailed

je/sam