

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**WESLEY K WINTERBOTTOM**  
Claimant

**APPEAL 17A-UI-12174-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 01/22/17  
Claimant: Appellant (1)**

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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:**

The claimant/appellant filed a timely appeal from the November 13, 2017 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision which concluded the claimant was overpaid unemployment insurance benefits because the claimant incorrectly reported, or failed to report, earnings from Leader Construction Company between March 13, 2014 and July 8, 2017. IWD imposed a 15% administrative penalty due to misrepresentation.

The parties were properly notified of the hearing. A telephone hearing was held on December 15, 2017. The claimant, Wesley K. Winterbottom, participated personally. Troy Shelley, Investigator II, participated on behalf of IWD. Department Exhibits A through C 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.

**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: The claimant most recently filed a claim for unemployment insurance benefits with an effective date of January 22, 2017. He also established claims for benefits in 2014, 2015, and 2016.

When the claim was filed each year, the claimant was given the option of reading the Unemployment Insurance Handbook online or to have the handbook mailed. (Department Exhibit A2). The claimant elected to have the handbooks mailed each year. (Department Exhibit A2) The Unemployment Insurance Handbook included instructions for properly filing

claims and informed the claimant that failure to follow the instructions in the handbook may lead to an improper payment of benefits that must be paid back (Department Exhibit B4(2)). The handbook also informed Mr. Winterbottom that he should call IWD customer service for help if he didn't understand the information in the handbook (Department Exhibit A6).

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

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 (Department exhibit B1(2)).

The handbook also alerted the claimant 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
- denial of future benefits by administrative penalty
- repayment of fraudulently collected UI benefits plus a 15 percent penalty
- wages garnishments and liens
- interception of state and federal tax refunds (Department Exhibit B4(2)).

The claimant filed weekly claims throughout the period between March 13, 2014 and July 8, 2017. During fifty-five of the weeks he sought to claim unemployment insurance benefits, he reported he earned \$0 wages that week with his employer, Leader Construction (Department Exhibit B7). The claimant actually had performed work for each of those fifty-five weeks and earned wages (Department Exhibit A4).

The claimant stated he did not report the wages because he was experiencing financial hardship. Since 2010, the claimant had custody of his now 23 year old granddaughter, which contributed to mounting legal and medical costs. The claimant asserted he did what he had to do. The claimant did not seek out other government assistance, stating he was "old school". The claimant acknowledged he knew he was wrong in not reporting his wages each week he also claimed benefits (Department Exhibit B12).

IWD, through Mr. Shelley, conducted an audit and confirmed that the claimant received wages from Leader Construction Company during the time period of March 13, 2014 and July 8, 2017 but failed to report the wages. IWD spoke to the employer's representative. Julie Baker, CPA, who completed a recheck with the employer(s) to verify the claimant's wages (Department Exhibit A3)

Because the claimant did not report his wages during this same period, an overpayment of \$21,953.00 was determined by IWD (Department Exhibit A4). Consequently, upon reviewing the wages reported by the both the claimant and employer, the agency determined the following incorrect payments were made to the claimant:

WEEK ENDING	WAGES PER CLAIMAN T	WAGES PER EMPLOYE R	UI BENEFIT S PAID	UI BENEFITS ENTITLED	OVERPAYME NT OF BENEFITS
03/22/14	\$0	\$160	\$408	\$350	\$58
03/29/14	\$0	\$266	\$408	\$244	\$164
04/05/14	\$0	\$584	\$408	\$0	\$408
04/12/14	\$0	\$881	\$408	\$0	\$408
04/19/14	\$0	\$960	\$408	\$0	\$408
04/26/14	\$0	\$698	\$408	\$0	\$408
05/03/14	\$0	\$599	\$408	\$0	\$408
05/10/14	\$0	\$1147	\$408	\$0	\$408
05/17/14	\$0	\$968	\$408	\$0	\$408
05/24/14	\$0	\$933	\$408	\$0	\$408
05/31/14	\$0	\$627	\$408	\$0	\$408
06/07/14	\$0	\$698	\$408	\$0	\$408
03/28/15	\$0	\$893	\$416	\$0	\$416
04/04/15	\$0	\$852	\$416	\$0	\$416
04/11/15	\$0	\$563	\$416	\$0	\$416
04/18/15	\$0	\$1174	\$416	\$0	\$416
04/25/15	\$0	\$1018	\$416	\$0	\$416
05/02/15	\$0	\$1041	\$416	\$0	\$416
05/09/15	\$0	\$865	\$416	\$0	\$416
05/16/15	\$0	\$946	\$416	\$0	\$416
05/23/15	\$0	\$1110	\$416	\$0	\$416
05/30/15	\$0	\$683	\$416	\$0	\$416
06/06/15	\$0	\$850	\$416	\$0	\$416
06/13/15	\$0	\$737	\$416	\$0	\$416
06/20/15	\$0	\$1081	\$416	\$0	\$416
06/27/15	\$0	\$997	\$416	\$0	\$416
07/04/15	\$0	\$1042	\$416	\$0	\$416
03/19/16	\$0	\$868	\$431	\$0	\$431
03/26/16	\$0	\$801	\$431	\$0	\$431
04/02/16	\$0	\$991	\$431	\$0	\$431
04/09/16	\$0	\$936	\$431	\$0	\$431
04/16/16	\$0	\$1064	\$431	\$0	\$431
04/23/16	\$0	\$494	\$431	\$0	\$431
04/30/16	\$0	\$600	\$431	\$0	\$431
05/07/16	\$0	\$883	\$431	\$0	\$431
05/14/16	\$0	\$400	\$431	\$138	\$293
05/21/16	\$0	\$1071	\$431	\$0	\$431
05/28/16	\$0	\$509	\$431	\$0	\$431
06/04/16	\$0	\$734	\$431	\$0	\$431
06/11/16	\$0	\$915	\$431	\$0	\$431
04/01/17	\$0	\$851	\$447	\$0	\$447
04/08/17	\$0	\$445	\$447	\$113	\$334
04/15/17	\$0	\$130	\$447	\$428	\$19
04/22/17	\$0	\$460	\$447	\$98	\$349
04/29/17	\$0	\$685	\$447	\$0	\$447

05/06/17	\$0	\$893	\$447	\$0	\$447
05/13/17	\$0	\$1036	\$447	\$0	\$447
05/20/17	\$0	\$438	\$447	\$120	\$327
05/27/17	\$0	\$812	\$447	\$0	\$447
06/03/17	\$0	\$715	\$447	\$0	\$447
06/10/17	\$0	\$669	\$447	\$0	\$447
06/17/17	\$0	\$500	\$447	\$0	\$447
06/24/17	\$0	\$630	\$447	\$0	\$447
07/01/17	\$0	\$471	\$447	\$0	\$447
07/08/17	\$0	\$708	\$447	\$0	\$447
				<b>Subtotal</b>	\$2195.003
				<b>15% penalty</b>	\$3292.95
				<b>Net Total</b>	\$25245.95

The claimant does not dispute the overpayment amount but argued that a penalty should not be imposed.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes IWD did correctly calculate the claimant's overpayment of benefits and did correctly impose a 15% penalty due to the claimant's misrepresentation.

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 undisputed evidence presented is the claimant made weekly continued claims fifty-five times during the period of March 13, 2014 and July 8, 2017, reporting he earned \$0 in wages (Department Exhibit B7), when he in fact, performed work each week for Leader Construction Company (Department Exhibit A3). When the claimant filed his claim each benefit year (2014, 2015, 2016, and 2017), he agreed that he would read and understand the handbook (Department Exhibit A2).

The handbook contained explicit language regarding the reporting of wages:

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 (Department Exhibit B1(2)).

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 his failure to properly do so, could result in an overpayment, which he must repay. As a result, the claimant was overpaid benefits in the amount of \$21,953.00, to which he was not entitled (Department Exhibit A4). The administrative law judge concludes therefore, that 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 knowingly failed to disclose a material fact with the intent to obtain unemployment benefits to which the individual is not entitled.

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, in the discretion of the department, either be liable to have the sum deducted from any future benefits payable to the individual under this chapter or shall be liable to repay to the department for the unemployment compensation fund, a sum equal to the amount so received by the individual.
- b. The department shall assess a penalty equal to fifteen percent of the amount of a  
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

Although the claimant apologized and regretted his actions (Department Exhibit B12), the record establishes he willfully and knowingly made false statements to the agency on fifty-five separate occasions, when he reported he earned \$0 in wages but in fact performed work (Department B7). This was blatantly false. The claimant's repeated and intentional concealment of wages led to the claimant receiving an overpayment of unemployment insurance benefits (Department Exhibit A4).

Based on the evidence presented, the administrative law judge concludes the calculated overpayment was correct, and the claimant knowingly omitted material information to IWD when he failed to correctly report his wages earned for the period between March 13, 2014 and July 8, 2017 and concurrently filed for unemployment insurance benefits. Accordingly, the administrative law judge concludes the overpayment was correctly calculated and the application of a 15% penalty due to misrepresentation was warranted.

**DECISION:**

The November 13, 2017 (reference 01) unemployment insurance decision is affirmed. The claimant was overpaid benefits in the amount of \$21,953.00. IWD correctly imposed a 15% administrative penalty due to the claimant's misrepresentation in the amount of \$3,292.65. Therefore, the claimant is required to repay \$25,245.95 as a result of the overpayment and imposed penalty.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

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