

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANGELA STOOKEY
Claimant

APPEAL 19A-UI-06668-DG-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 08/12/18
Claimant: Appellant (1)**

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 an appeal from the August 16, 2019 (reference 05) Iowa Workforce Development (“IWD”) unemployment insurance decision which concluded the claimant was overpaid unemployment insurance benefits because she failed to accurately report earnings while concurrently filing weekly claims for unemployment insurance benefits. IWD also imposed a 15% administrative penalty due to misrepresentation.

The parties were properly notified of the hearing. A telephone hearing was held on September 24, 2019. The claimant participated personally. Kasandra Ellenwood, Investigator, participated on behalf of IWD. IWD Exhibits A-H 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 filed a claim for unemployment insurance benefits with an effective date of August 12, 2019.

When the claim was established, the claimant was directed to read the Unemployment Insurance 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 don’t understand the information in the handbook.

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 provides in part:

Overpayment

Individuals are responsible for repaying any benefits they were not eligible to receive. Future UI benefit payments are withheld until the overpayment has been recovered in full. If the individual is not making attempts to repay the overpayment, the debt may be recovered by withholding state and federal tax refunds, casino and lottery winnings, and vendor payments. Overpayments caused by fraud include a 15% penalty.

The handbook also alerts claimants 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

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

Before completing her weekly continued claim each week, the claimant had to check a box that stated she understood the warning message above and wished to proceed.

IWD conducted an audit and discovered that claimant received wages from KJ Gimbel Industries, LLC, and Zio Johno's, Inc. During the time period of August 25, 2018 through December 15, 2018 claimant failed to accurately report her wages. IWD contacted the employers by mail and called them beginning on April 29, 2019 to verify the claimant's wages earned with each employer. The employers reported the wages claimant received during the dates she worked there. Claimant under reported her wages each week. (Department Exhibit C-2).

A review of the administrative file reflects the claimant did not report the same wages as the employers. Each week from August 25, 2018, through December 15, 2018, the claimant reported she earned less wages than what the employer's reported, when she filed her weekly continued claim. (Department Exhibit C-2).

As a result of the employer's verification of wages, the investigator also contacted the claimant. The claimant was mailed a preliminary audit on August 5, 2019, which stated she may have been overpaid benefits for failing to accurately report her wages. The letter also informed claimant that an overpayment may result in consequences including a 15% penalty.

The claimant did not dispute the overpayment amount or provide evidence that the wages reported by the employer were inaccurate.

Claimant's weekly benefit amount was \$143.00. Because the claimant did not accurately report her wages during this same period, an overpayment of \$1,604.00 was determined by IWD. The agency established the overpayment based upon payments made to the claimant which she was not entitled to receive. (Department Exhibit C-2).

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. The claimant does not dispute the overpayment amount but argued that a penalty should not be imposed because she did not intentionally misreport her wages. Claimant calculated the hours she worked times her hourly wage. She did not know she had to report tips.

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, 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.

- 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.

The administrative law judge is persuaded the claimant knew or should have known she must report all wages earned each week that she sought to claim unemployment insurance benefits, and that failure to properly do so, could result in an overpayment, which she must repay. The claimant under reported her wages for the period beginning August 25, 2018 through December 15, 2018 as she filed weekly continued claims for unemployment insurance benefits during the same time (Department Exhibit C-2). No evidence was presented that the wages reported by the employer to IWD were inaccurate or incorrect. Consequently, the claimant was able to collect both wages and an excessive amount of unemployment insurance benefits each week. As a result, the claimant was overpaid benefits in the amount of \$1,604.00, to which she was not entitled. 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 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(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

Based on the evidence presented, the administrative law judge concludes the claimant knowingly omitted material information to IWD when she failed to correctly report her wages and tips earned from when she filed for unemployment insurance benefits. On multiple occasions, the claimant reported she earned less in wages than what she actually earned and received. This was false. The claimant's repeated and intentional concealment of wages led to the claimant receiving an overpayment of unemployment insurance benefits.

Therefore, the administrative law judge concludes the calculated overpayment was correct, and the claimant knowingly omitted material information to IWD when she failed to correctly report wages earned for the period beginning on August 25, 2018 through December 15, 2018 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 August 16, 2019 (reference 05) unemployment insurance decision is affirmed. The claimant was overpaid benefits in the amount of \$1,604.00. IWD correctly imposed the administrative penalty due to the claimant's misrepresentation.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/scn