

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JASON KELLY
Claimant

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

APPEAL 20A-UI-01151-B2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/08/19
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, Jason Kelly, filed an appeal from the January 24, 2020 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision which concluded the claimant was overpaid unemployment insurance benefits because claimant 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 February 24, 2020. The claimant, Kelly, participated personally. Elizabeth Volious, Investigator, participated on behalf of IWD. IWD Exhibits 1-15 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 December 8, 2019. He’d previously filed claims on December 3, 2017, and December 2, 2018.

When the claim was established, the claimant was directed to read the Unemployment Insurance Handbook (Department Exhibit 12). 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 (Department Exhibit 12).

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 (Department Exhibit 12).

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. (Department Exhibit 12).

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 (Department Exhibit 12)

In addition, each week the claimant would complete a weekly continued claim, he 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 his weekly continued claim each week, the claimant had to check a box that stated he understood the warning message above and wished to proceed (Department Exhibit 13).

IWD conducted an audit and discovered that he received wages from employer GCC Alliance Concrete. During the time period of 2017-2020, but failed to report the wages. IWD contacted the employer to verify the claimant's wages earned with employer, GCC (Department Exhibit 3). The employer confirmed the claimant performed work during the time periods between 2017-2020 that he was receiving unemployment benefits and claiming no wages.

A review of the administrative file reflects the claimant did not report the same wages as the employer. As a result of the employer's verification of wages, Vilious also contacted the claimant. The claimant was mailed a preliminary audit on January 15, 2020, which stated he may have been overpaid benefits in the amount of \$2,917.00, for failing to report his wages (Department Exhibit 3). The letter also informed him that an overpayment may result in consequences including a 15% penalty (Department Exhibit 3).

Kelly contacted IWD on January 23, 2020 in response to the letter. The claimant did not dispute the overpayment amount or provide evidence that the wages reported by the employer were inaccurate. The claimant stated he did not his report the wages because he thought he was allowed to work 10 hours a week and not report them.

Claimant's weekly benefit amount was between \$481.00 and \$540.00 (Department Exhibit 3). Because the claimant did not accurately report his wages during this same period, an overpayment of \$2,917.00 was determined by IWD (Department Exhibit 3). The agency established the overpayment based upon the following incorrect payments made to the claimant: (Department Exhibit 3)

WEEK ENDING	WAGES REPORTED	WAGES EARNED	BENEFITS PAID	BENEFITS ENTITLED	OVERPAYMENT
12/09/17	250.00	293.00	425.00	382.00	43.00
02/03/18	0.00	641.00	540.00	0.00	540.00
12/15/18	0.00	308.00	529.00	221.00	308.00
01/12/19	0.00	759.00	529.00	0.00	529.00
01/26/19	0.00	383.00	529.00	278.00	251.00
02/23/19	0.00	504.00	529.00	157.00	372.00
03/09/19	0.00	275.00	529.00	386.00	143.00
03/23/19	0.00	628.00	529.00	0.00	529.00
12/14/19	0.00	140.00	481.00	341.00	140.00
01/11/20	0.00	182.00	481.00	419.00	62.00
			SUBTOTAL:		2,917.00
			15% Penalty		437.55
			NET TOTAL		3,354.55

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. On ten occasions, the claimant responded to ten weekly continued claim filings that he had not performed any work and that he did not earn any wages. The claimant does not dispute the overpayment amount but argued that a penalty should not be imposed because he thought he could work ten hours.

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 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. 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 unemployment insurance benefits each week. As a result, the claimant was overpaid benefits in the amount of \$2,917.00, to which he was not entitled (Department Exhibit 3). 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 he failed to correctly report his wages earned from 2017-2020 when he filed for unemployment insurance benefits. On ten separate occasions, the claimant reported he earned \$0.00 in wages but in fact performed work (Department Exhibit 3). This was blatantly 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 he failed to correctly report wages earned for the period 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 January 24, 2020 (reference 01) unemployment insurance decision is affirmed. The claimant was overpaid benefits. IWD correctly imposed the administrative penalty due to the claimant’s misrepresentation.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn