

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

CHRISTOPHER VALENTINE
Claimant

APPEAL 22A-UI-14859-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 03/15/20
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:

Claimant filed an appeal from the June 28, 2022 (reference 01) unemployment insurance decision that found claimant was overpaid unemployment insurance (UI) benefits and imposed an administrative penalty due to misrepresentation. The parties were properly notified of the hearing. A telephone hearing was held on October 4, 2022.

Claimant participated and was represented by Attorney Nadine Stille. Employer, Chicha Shack West Des Moines, participated through Mohamed Ali, Owner. Iowa Workforce Development (IWD) participated through Ty Lysinger, Investigator. Claimant's Exhibits A through E were admitted. Department's Exhibits 1 through 9 were admitted. Official notice was taken of the administrative record.

The record remained open until October 5, 2022 at 4:30 p.m. for claimant to submit a supplemental brief. The brief was received timely and is incorporated into the record. Employer responded to the brief on October 6, 2022. Employer's response was received and will also be incorporated into the record.

ISSUES:

Whether claimant was overpaid UI benefits.
Whether a penalty was properly imposed.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant filed an initial claim for benefits effective March 15, 2020 and ongoing weekly claims from March 15, 2020 until September 12, 2020. Claimant's weekly benefit amount (WBA) was \$230.00. In question are the 15 benefit weeks between May 31, 2020 and September 12, 2020.

The following chart reflects the weeks that claimant filed ongoing weekly claims, the wages that claimant submitted on his weekly claims, the wages that employer reported claimant earned

each week and the amount of UI benefits paid to claimant (as reflected in the administrative record):

Benefit Week Ending	Wages Submitted by Claimant	Wages Reported by Employer	UI Benefits Paid To Claimant
6/6/2020	\$110.00	\$152.00	\$177.00
6/13/2020	\$184.00	\$378.00	\$103.00
6/20/2020	\$168.00	\$279.00	\$119.00
6/27/2020	\$183.00	\$306.00	\$104.00
7/4/2020	\$270.00	\$303.00	\$0.00
7/11/2020	\$187.00	\$345.00	\$100.00
7/18/2020	\$184.00	\$396.00	\$103.00
7/25/2020	\$182.00	\$405.00	\$105.00
8/1/2020	\$187.00	\$287.00	\$100.00
8/8/2020	\$152.00	\$325.00	\$135.00
8/15/2020	\$0.00	\$84.00	\$230.00
8/22/2020	\$210.00	\$510.00	\$77.00
8/29/2020	\$162.00	\$368.00	\$125.00
9/5/2020	\$132.00	\$447.00	\$155.00
9/12/2020	\$225.00	\$711.00	\$62.00
TOTAL:	\$2,536.00	\$5,296.00	

Employer did not utilize a time punch system for employees to record their hours worked. Instead, at the close of business each day, an employee would poll coworkers on the number of hours each worked and the amount of tips each received. The employee would write this information on an envelope, send a photograph of the envelope to the owner and leave the envelope for the owner to retrieve when he returned to work the following day. Employer took the information from the envelope, entered it into a spreadsheet on his computer and forwarded the spreadsheet to his accountant each month for payroll purposes. Employees were paid on a monthly basis and received a paystub with each check. Claimant has copies of his pay stubs but did not provide them as evidence during either the auditor or the hearing. Claimant did not compare the amount he reported on his weekly claims with the amount of wages he received from employer at the end of each month.

Claimant disagrees with the amount of wages employer reported that he earned each week. Claimant cannot explain the discrepancy but reports a history of employer not paying employees for all hours worked.

For tax purposes, employer reported to the State of Iowa that claimant earned gross wages of \$1,185.00 in the second quarter of 2020 and \$5,417.00 for the third quarter of 2020.

When the claim was initially filed, claimant agreed to read the Unemployment Insurance Handbook. The handbook instructs claimants on what to report on their weekly claims:

You must report all gross earnings and gross wages on the weekly claim. Wages are reportable when earned, not when paid. Gross earnings or gross wages are your earnings before taxes or other payroll deductions are made. For additional information, please refer to the page on reportable income.

The handbook provides further guidance on reporting earnings:

Gross earnings or gross wages are your earnings before taxes or other payroll deductions are made. Earnings or wages 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 you have not yet received the payment. To calculate the amount to report, multiply the number of hours you worked by your hourly wage. . . .

The handbook alerts claimants to the 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, fines, and imprisonment
- An overpayment of fraudulently collected unemployment insurance benefits that you must repay, plus a fifteen percent misrepresentation penalty and daily interest . . .

IWD conducted an audit and discovered that claimant underreported his wages earned on his weekly claims. On June 28, 2022, IWD issued a decision (reference 01) finding claimant was overpaid UI benefits in the amount of \$1,357.00 for 14 weeks between May 31, 2020 and September 12, 2020. In addition, IWD imposed a 15% penalty for misrepresentation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes:

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.

Iowa Code section 96.5(5) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

5. Other compensation.

a. For any week with respect to which the individual is receiving or has received payment in the form of any of the following:

(1) Wages in lieu of notice, separation allowance, severance pay, or dismissal pay.

(2) Compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States.

(3) A governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment made under a plan maintained or contributed to by a base period or chargeable employer where, except for benefits under the federal Social Security Act or the federal Railroad Retirement Act of 1974 or the corresponding provisions of prior law, the plan's eligibility requirements or benefit payments are affected by the base period employment or the remuneration for the base period employment. However, this subparagraph shall only be applicable if the base period employer has made one hundred percent of the contribution to the plan.

b. Provided, that if the remuneration is less than the benefits which would otherwise be due under this chapter, the individual is entitled to receive for the week, if otherwise eligible, benefits reduced by the amount of the remuneration. Provided further, if benefits were paid for any week under this chapter for a period when benefits, remuneration or compensation under paragraph "a", subparagraph (1), (2), or (3), were paid on a retroactive basis for the same period, or any part thereof, the department shall recover the excess amount of benefits paid by the department for the period, and no employer's account shall be charged with benefits so paid. However, compensation for service-connected disabilities or compensation for accrued leave based on military service by the beneficiary with the armed forces of the United States, irrespective of the amount of the benefit, does not disqualify any individual otherwise qualified from any of the benefits contemplated herein. A deduction shall not be made from the amount of benefits payable for a week for individuals receiving federal social security pensions to take into account the individuals' contributions to the pension program.

Iowa Code section 96.3(3) provides:

3. Partial unemployment. An individual who is partially unemployed in any week as defined in section 96.1A, subsection 37, paragraph "b", and who meets the conditions of eligibility for benefits shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. The benefits shall be rounded to the lower multiple of one dollar.

The "weekly benefit amount" refers to the unemployment insurance benefits payable to an individual pursuant to Iowa Code chapter 96, the Iowa Employment Security Law. See Iowa Code §§ 96.1, 96.1A(5), (42). The weekly benefit amount is not the sum of state UI benefits and federal benefits pursuant to the CARES Act.

Iowa Admin. Code r. 871-24.18 provides:

Wage-earnings limitation. An individual who is partially unemployed may earn weekly a sum equal to the individual's weekly benefit amount plus \$15 before being disqualified for excessive earnings. If such individual earns less than the individual's weekly benefit amount plus \$15, the formula for wage deduction shall be a sum equal to the individual's weekly benefit amount less that part of wages, payable to the individual with respect to that week and rounded to the lower multiple of one dollar, in excess of one-fourth of the individual's weekly benefit amount.

It is the duty of the administrative law judge, as the trier of fact, 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 evidence you believe; 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, can dor, bias and prejudice. *Id.*

The findings of fact show how I have resolved the disputed factual issues in this case. I assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. I find the wages employer reported for claimant to be more credible than the wages claimant submitted on his weekly claims. Claimant's testimony is internally inconsistent. Claimant alleges employer has a history of inaccurately reporting employees' hours worked in an effort to pay them less. However, claimant did not keep his own records about his hours worked and tips earned to compare with his pay checks. Claimant did not double check the wages that he reported on his weekly claims with the wages he was paid at the end of the month. Notwithstanding the difference in the reporting frequency (weekly claims versus monthly paystubs), the discrepancy should have been clear; employer paid claimant twice the amount that he reported on his weekly claims. Finally, employer has no incentive to inflate the wages claimant earned for tax purposes; claimant has an incentive to underreport the wages he earned for unemployment insurance benefit purposes. The wages employer reported for claimant in response to the audit are more consistent with the wages employer reported for claimant for tax purposes than the amount of wages claimant submitted on his weekly claims.

For the nine weeks between June 7, 2020 and August 8, 2020 and the four weeks between August 16, 2020 and September 12, 2020, claimant worked and earned more than \$245.00 (his weekly benefit amount of \$230.00 plus \$15.00) each week. Therefore, claimant was not totally or partially unemployed and was not entitled to benefits.

For the benefit weeks ending June 6, 2020 and August 15, 2020, claimant worked and earned less \$245.00. Therefore, claimant was partially unemployed and was entitled to partial benefit payments according to the following formula:

$$\begin{aligned} & \$ (\text{wages}) - \$ (25\% \text{ of WBA}) = \$ (\text{wage deduction}) \\ & \$ (\text{WBA}) - \$ (\text{wage deduction}) = \$ (\text{partial weekly benefit amount}) \end{aligned}$$

The following chart reflects the benefits claimant received, the benefits claimant was entitled to and the resulting overpayment:

Benefit Week Ending	Benefits Paid to Claimant	Benefits Claimant was Entitled to	Over Payment
6/6/2020	\$177.00	\$135.00	\$42.00
6/13/2020	\$103.00	\$0.00	\$103.00
6/20/2020	\$119.00	\$0.00	\$119.00
6/27/2020	\$104.00	\$0.00	\$104.00
7/4/2020	\$0.00	\$0.00	\$0.00
7/11/2020	\$100.00	\$0.00	\$100.00
7/18/2020	\$103.00	\$0.00	\$103.00

7/25/2020	\$105.00	\$0.00	\$105.00
8/1/2020	\$100.00	\$0.00	\$100.00
8/8/2020	\$135.00	\$0.00	\$135.00
8/15/2020	\$230.00	\$203.00	\$27.00
8/22/2020	\$77.00	\$0.00	\$77.00
8/29/2020	\$125.00	\$0.00	\$125.00
9/5/2020	\$155.00	\$0.00	\$155.00
9/12/2020	\$62.00	\$0.00	\$62.00
		TOTAL:	\$1,357.00

Claimant was overpaid UI benefits in the amount of \$1,357.00 for 14 weeks between May 31, 2020 and September 12, 2020. Claimant is required to repay those benefits.

The next issue to be determined is whether the imposition of a 15% penalty due to fraud is warranted. For the reasons that follow, the administrative law judge concludes:

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)(emphasis added).

Iowa Code section 96.16(1) provides (emphasis added):

Penalties. **An individual who makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, to obtain or increase any benefit** or other payment under this chapter, either for the individual or for any other individual, **is guilty of a fraudulent practice** as defined in sections 714.8 to 714.14.

Iowa Code section 96.16(4)(a) and (b) provide in pertinent 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 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.

Iowa Admin. Code r. 871- 25.1 provides the following definition of "fraud" (emphasis added):

[T]he 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.

Claimant had a duty to truthfully and accurately answer questions when filing his weekly claim. Claimant alleges employer's timekeeping could not be trusted but did not keep a record of his hours worked and tips received. Claimant did not compare the wages he reported on his weekly claims with the wages he was paid by employer each month. Claimant underreported his wages on his weekly claims by half. Claimant willfully and knowingly failed to disclose material facts to obtain unemployment benefits to which he was not entitled, which constitutes a fraudulent practice. The 15% administrative penalty was properly imposed.

DECISION:

The June 28, 2022 (reference 01) unemployment insurance decision is AFFIRMED. Claimant was overpaid UI benefits in the amount of \$1,357.00, which must be repaid. A 15% administrative penalty for fraud shall be imposed.



Adrienne C. Williamson
Administrative Law Judge

October 19, 2022
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.