

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

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**AMBER L ALLISON**  
Claimant

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT  
INVESTIGATION & RECOVERY**

**APPEAL 22A-UI-16927-DZ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/15/20**  
**Claimant: Appellant (4)**

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Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Code § 96.16(4) – Offenses and Misrepresentation

**STATEMENT OF THE CASE:**

Amber L. Allison, the claimant/appellant, filed an appeal from the August 17, 2022 (reference 04) unemployment insurance (UI) decision that concluded she was overpaid Lost Wage Assistance Payments (LWAP) benefits in the gross amount of \$1,200.00 because she did not report, or incorrectly reported her earnings from employer Jethro and Jake's Inc for 4 weeks between July 26, 2020 and August 22, 2020 while receiving REGULAR (state) UI benefits. IWD imposed a 15 percent administrative penalty due to misrepresentation. The parties were properly notified of the hearing. A telephone hearing was held on October 10, 2022. Appeals 22A-UI-16920-DZ-T, 22A-UI-16923-DZ-T, 22A-UI-16925-DZ-T, and 22A-UI-16927-DZ-T were heard together and formed one hearing record. Ms. Allison participated personally. The department participated through Tyler Lysinger, investigator. The employer participated through Kylie Pelletier, corporate operations. The administrative law judge took official notice of the administrative record. Department's Exhibit 1-10 were admitted as evidence.

**ISSUES:**

Did Ms. Allison correctly report wages earned?  
Has Ms. Allison been overpaid LWAP benefits?  
Did IWD properly impose the administrative penalty?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Allison filed a claim for UI benefits with an effective date of March 15, 2020. IWD set Ms. Allison's weekly UI benefit amount at \$518.00. Ms. Allison had worked for the employer since 2011. When she filed her UI claim Ms. Allison was employed as a full-time bartender and the employer paid her \$12.00 per hour, plus tips from credit card purchases during shifts she worked, plus tips from total sales from servers during shifts she worked. Ms. Allison filed her UI claim because the employer closed due to the global COVID-19 pandemic. Ms. Allison returned to work in May 2020 with reduced hours but the same pay and pay structure.

When Ms. Allison established her UI claim, she checked the box saying she agreed to read the IWD UI Handbook, but she did not read the handbook. The 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 do not understand the information in the handbook.

With respect to reporting earnings, the handbook states:

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.

Example: 10 hours X \$12.00/hour = \$120.00 in gross earnings

You should report the full gross amount of earnings and we will calculate any deductions. Deductions and/or earnings are calculated differently depending on the type of income. See the general guidelines on deductibility below.

The handbook also provides in part:

#### Preparing to File a Weekly Claim

You should have the following information available when filing your weekly claim:

- SSN
- PIN
- Total amount of gross wages (before deductions) earned during the week
- Total amount of gross holiday pay, vacation and severance, if applicable

In addition, each week Ms. Allison 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, Ms. Allison had to check a box that stated she understood the warning message above and wished to proceed. When filing a weekly claim, Ms. Allison was instructed to answer the question "Did you work during the week of Sunday, [month day] through Saturday, [month day]?" Ms. Allison was also instructed to report wages by entering "the gross amount rounded to the nearest dollar."

In relevant part, Ms. Allison filed weekly UI claims for the following 4 weeks between July 26, 2020 and August 22, 2020. Ms. Allison reported her weekly earnings as follows:

- \$390.00 for the week of July 26 through August 1,
- \$312.00 for the week of August 2-8,
- \$395.00 for the week of August 9-15,

- \$390.00 for the week of August 16-22,

Based on the earnings she reported, IWD paid Ms. Allison REGULAR (state) UI benefits, and LWAP benefits for those 4 weeks. IWD paid Ms. Allison LWAP benefits in the total gross amount of \$1,200.00, broken out as follows:

- \$300.00 for the week of July 26 through August 1,
- \$300.00 for the week of August 2-8,
- \$300.00 for the week of August 9-15,
- \$300.00 for the week of August 16-22,

The Lost Wage Assistance Program was created by presidential Executive Order 8, signed on August 8, 2020. To receive LWAP benefits in any given week, a claimant must be eligible to receive at least \$100.00 in unemployment benefits per week, and the individual must self-certify that he or she is unemployed or partially unemployed as a result of the COVID-19 pandemic.

IWD conducted an audit of Ms. Allison's earnings in June 2022. In June 2022, IWD asked employer Jethro and Jake's Inc to report Ms. Allison's weekly gross earnings from March 15, 2020 through April 17, 2021. In relevant part, employer Jethro and Jake's Inc reported to IWD that Ms. Allison's gross earnings for the 4 weeks as follows:

- \$257.00 for the week of July 26 through August 1,
- \$335.00 for the week of August 2-8,
- \$252.00 for the week of August 9-15,
- \$257.00 for the week of August 16-22,

On July 7, 2022, Mr. Lysinger mailed Ms. Allison a notice of preliminary audit, which stated that she may have been overpaid UI benefits in the total gross amount of \$20,676.00 between March 15, 2020 and April 17, 2021, because she did not report and/or incorrectly reported her earnings from employer Jethro and Jake's Inc. The letter also informed Ms. Allison that an overpayment may result in consequences, including a 15 percent penalty.

Ms. Allison participated in the scheduled July 26, 2022 telephone interview with Mr. Lysinger. Ms. Allison questioned the employer's numbers and stated the employer could have paid her tips that she was not aware of. Mr. Lysinger told Ms. Allison that she could provide information she had showing her wages and tips. On August 4, Ms. Allison sent Mr. Lysinger bank statements for April through July 2020, and an employee check summary showing her pay from March 2, 2020 through April 30, 2021. The employee check summary matched the information the employer had provided to IWD. Mr. Lysinger followed up with the employer to understand how the employer paid bartenders tips. Ms. Pelletier explained that the bartenders are paid their hourly wages, plus tips from credit card purchases for each shift they worked, plus tips from total sales from servers for each shift they worked. Ms. Pelletier explained that bartender would not know how much tips they would receive from total sales from servers until they received them, but bartenders could check their paystubs to see how much tips they received.

Based on its audit, IWD determined that even though Ms. Allison had received REGULAR (state) UI benefits for the 4 weeks, she is entitled to \$0.00 in REGULAR (state) UI benefits for those weeks. In relevant part, IWD issued an August 17, 2022 (reference 01) UI decision that concluded Ms. Allison was overpaid REGULAR (state) UI benefits for the 4 weeks. Ms. Allison appealed that decision. In relevant part, the administrative law judge's decision in Appeals 22A-UI-16920-DZ-T concluded that Ms. Allison was overpaid (because she was not eligible for)

REGULAR (state) UI benefits for the 4 weeks. Since Ms. Allison is not eligible for REGULAR (state) UI benefits for the 4 weeks between July 26, 2020 and August 22, 2020, IWD concluded that Ms. Allison was overpaid LWAP benefits in the gross amount of \$1,200.00 for the 4 weeks.

Ms. Allison reported only the credit card tips she earned from each shift she worked, and the tips from servers when she received them. Ms. Allison did not report her hourly wage because she had told IWD that she was paid \$12.00 per hour, and she assumed IWD would somehow calculate how much she earned in hourly pay each week. Ms. Allison did not pay attention to her paystubs.

In addition to the overpayment, IWD assessed a 15 percent penalty due to misrepresentation. Mr. Lysinger testified that IWD assessed the penalty for the following reasons: the large difference between what Ms. Allison reported to IWD when she filed her weekly claims and what the employer report to IWD during the audit, Ms. Allison could have properly calculated her gross tips after-the-fact by looking at her paystubs, and Ms. Allison did not contact IWD to ask about properly reporting earnings. Ms. Allison argued that she should not be assessed the penalty because she did not intend to report incorrect earnings to IWD when she filed her weekly claim. Ms. Allison argued that she did her best to report the earnings she believed she was required to report, and she did not report \$0.00 in earnings each week

#### **REASONING AND CONCLUSIONS OF LAW:**

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

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.

In this case, since Ms. Allison is not eligible for REGULAR (state) UI benefits for the 4 weeks between July 26, 2020 and August 22, 2020, she is also not eligible for LWAP benefits for those 4 weeks. Ms. Allison has been overpaid LWAP benefits in the gross amount of \$1,200.00 for 4 weeks between July 26, 2020 and August 22, 2020. That means Ms. Allison owes IWD \$1,200.00. These benefits must be repaid.

The administrative law judge further concludes as follows:

IWD 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.<sup>1</sup>

Iowa Code section 96.16(4)(a) and (b) provide in part:

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<sup>1</sup> Iowa Code section 96.5(8).

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.<sup>2</sup> "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.<sup>3</sup>

However, LWAP is governed by federal law and Federal Emergency Management Agency (FEMA) rules and guidelines,<sup>4</sup> not by IWD, Iowa state law, or U.S. Department of Labor rules or guidelines. There appears to be no provision for a 15 percent administrative penalty in the FEMA law, and Mr. Lysinger, on behalf of IWD, could not cite to any such provision. As such, IWD is not authorized to impose a 15 percent administrative penalty on an LWAP overpayment.

Even assuming IWD had the legal authority to impose a 15 percent administrative penalty on an LWAP overpayment, based on the evidence presented, Ms. Allison did not intentionally misrepresent or omit earnings when she filed her weekly claims during the relevant 4 weeks. Ms. Allison incorrectly assumed that IWD would somehow calculate her weekly wages because she had told IWD that the employer paid her \$12.00 per hour. Ms. Allison also was careless in that she did not review her paystubs to make sure she was properly reporting all of her tips when she filed her weekly UI claims. However, IWD has failed to establish that Ms. Allison had any intent to misrepresent any information when she filed her weekly claims. The fact that the earnings Ms. Allison reported each week were so far off from what the employer reported does not, on its own, establish intent. Furthermore, if Ms. Allison assumed, even if incorrectly, that

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<sup>2</sup> Iowa Admin. Code r. 871- 25.1

<sup>3</sup> *Id.*

<sup>4</sup> See generally *FEMA Supplemental Lost Wages Payments under Other Needs Assistance, Frequently Asked Questions* [https://www.fema.gov/sites/default/files/documents/fema\\_supplemental-lost-wages-payments-under-other-needs-assistance\\_022022.pdf](https://www.fema.gov/sites/default/files/documents/fema_supplemental-lost-wages-payments-under-other-needs-assistance_022022.pdf)

she was properly reporting her earnings each week, why would she contact IWD about properly reporting her weekly earnings?

Since IWD does not have authority to impose a 15 percent administrative penalty on an LWAP overpayment, and even assuming it had the legal authority to do so, IWD has not established that Ms. Allison intentionally misrepresented or intentionally omitted earnings when she filed her weekly claims for the relevant 4 weeks, the imposition of the 15 percent penalty due to misrepresentation is not warranted.

**DECISION:**

The August 17, 2022 (reference 04) UI decision is MODIFIED IN FAVOR OF THE APPELLANT, Ms. Allison. Ms. Allison has been overpaid LWAP benefits in the gross amount of \$1,200.00. IWD does not have the authority to impose the administrative penalty due to misrepresentation on this LWAP overpayment. The administrative penalty is not warranted.



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Daniel Zeno  
Administrative Law Judge

October 15, 2022  
Decision Dated and Mailed

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**NOTE TO MS. ALLISON:**

- You may also request a waiver of this \$1,200.00 LWAP overpayment by 1) applying for a waiver online, 2) applying for a waiver in writing by mail, or 3) filing an appeal.
- The online waiver request form is available on the IWD website at: <https://www.iowaworkforcedevelopment.gov/federal-unemployment-insurance-overpayment-recovery>
- The written waiver request form must include the following information:
  - Your name & address.
  - Decision number/date of decision.
  - Dollar amount of overpayment requested for waiver.
  - Relevant facts that you feel would justify a waiver.
- The request should be sent to:

Iowa Workforce Development  
Overpayment waiver request  
1000 East Grand Avenue  
Des Moines, IA 50319
- If this decision becomes final and you are not eligible for a waiver, you will have to repay the benefits you received.
- To check on your waiver application call **888-848-7442** or email [iwduitax@iwdiowa.gov](mailto:iwduitax@iwdiowa.gov)

**APPEAL RIGHTS.** If you disagree with this 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  
4<sup>th</sup> 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.