

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MOHAMED A MHDH**  
Claimant

**APPEAL 21A-UI-09093-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 02/23/20  
Claimant: Appellant (4)**

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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, Mohamed A. Mdhi, filed an appeal from the March 23, 2021 (reference 03) Iowa Workforce Development (“IWD”) unemployment insurance decision which concluded the claimant was overpaid unemployment insurance benefits for the period of February 23, 2020 through April 11, 2020, and also imposed a 15% administrative penalty due to misrepresentation.

After proper notice, a first hearing was scheduled between the parties for June 16, 2021. The hearing was postponed by Administrative Law Judge, Elizabeth Johnson, at the claimant’s request. New notices of hearing were mailed June 15, 2021 for a July 15, 2021 hearing.

A telephone hearing was conducted on July 15, 2021. The hearing was held together with Appeals 21A-UI-09096-JC-T and 21A-UI-09091-JC-T. The claimant participated personally and was represented by Jeff Lipman, attorney at law. No representative from the IWD Investigations and Recovery Unit appeared and no documentation was submitted in lieu of participation.

The administrative law judge took official notice of the administrative records. Department Exhibit 1 (Appeal letter) was admitted. 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: Claimant began employment in 2018 for the employer, TPI Iowa LLC., and worked as a full-time associate until he was discharged on December 8, 2020.

Claimant has a claim for unemployment insurance benefits on file with an effective date of February 23, 2020. Weekly continued claims were made between February 23, 2020 and April 11, 2020, in which no wages were reported each week, reflecting claimant was totally unemployed. Based upon the weekly claims filed, unemployment insurance benefits were approved. The benefits were not actually paid out by debit card until February 16, 2021 (See KPY1, KPYX). Claimant received two payments of Federal Pandemic Unemployment Compensation benefits (FPUC) in the amount of \$1,200.00 (net: \$1,020.00.) on an IWD debit card. Claimant was also paid \$3,367.00 (net: \$2861.95). Administrative records reflect the following (gross) payments based upon the weeks filed:

PAYMENT-RECORDS.		***** UI ***** *				
BWE-DATE	AMT-RP	ISSUE-DT	P	PAY-CODE	AMOUNT	P
02/29/20	.00	02/15/21	2	PAID-DC	481.00	
03/07/20	.00	02/15/21	2	PAID-DC	481.00	
03/14/20	.00	02/15/21	2	PAID-DC	481.00	
03/21/20	.00	02/15/21	2	PAID-DC	481.00	
03/28/20	.00	02/15/21	2	PAID-DC	481.00	
04/04/20	.00	02/15/21	2	PAID-DC	481.00	
04/11/20	.00	02/15/21	2	PAID-DC	481.00	

Claimant denied making claims for the period of February 23, 2020 through April 11, 2020 because he was working full-time at TPI Iowa LLC and knew he could not make claims while working full-time. Claimant has no history of fraud or misrepresentation with IWD, and was unaware of any identity theft or fraud.

During a phone call with IWD, claimant was told his claim was being referred to the Investigations and Fraud department for investigation. Claimant denied being contacted by IWD the Investigations and Fraud department before the overpayment decisions and administrative penalty were imposed. No fact-finding documents or investigation were available in the administrative file or presented on behalf of the Investigations and Recovery Unit for the hearing.

Claimant believed the payments made in February 2021 were in conjunction with the claim he established in December 2020 after separation with TPI Iowa LLC. On March 23, 2021, IWD issued an initial decision (reference 03) stating he had been overpaid \$3,367.00 for the period between February 23, 2020 and April 11, 2020. 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.

**REASONING AND CONCLUSIONS OF LAW:**

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**For the reasons that follow, the administrative law judge concludes IWD did correctly establish and calculate the claimant's overpayment of benefits, and did not 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.

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.1A, subsection 38, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.23(23) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

For an individual to be eligible to receive benefits, he must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code § 96.4(3). The burden is on the claimant to establish that he is able and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22. The undisputed evidence is that claimant was working full-time during the period of February 23, 2020 through April 11, 2020. He would not be eligible for unemployment insurance benefits for that period because he would not be able and available for work. See Iowa Admin. Code r. 871-24.23(23).

Claimant acknowledged receipt and deposit of benefits in the amount of \$3,367.00. This was for the period of February 23, 2020 through April 11, 2020, which he was ineligible for benefits. As a result, the claimant was overpaid benefits in the amount of \$3,367.00, to which he 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 undisputed evidence does not support a finding of fraud or misrepresentation. The claimant credibly testified that he did not receive a call or interview regarding possible fraud or misrepresentation from the IWD Investigations and Recovery Unit after being alerted his case would be audited. IWD Investigations and Recovery Unit did not present any evidence or witnesses in support of its finding that claimant committed fraud or misrepresentation in connection with the benefits received.

In contrast, claimant presented himself under oath, subject to cross examination and denied making claims during the period of February 23, 2020 through April 11, 2020. In the absence of any other evidence of equal weight either explaining or contradicting the claimant's testimony, it is held that the weight of evidence is established in favor of the claimant. While it is puzzling and concerning that claims may have been made without claimant's knowledge, the administrative law judge concludes that the evidence presented at the hearing and available administrative records for the hearing do not establish fraud or misrepresentation. Accordingly, the

administrative law judge concludes the overpayment was correctly calculated but the application of a 15% penalty due to misrepresentation was not warranted.

**DECISION:**

The March 23, 2021 (reference 03 ) unemployment insurance decision is **MODIFIED IN FAVOR OF THE CLAIMANT/APPELLANT**. The claimant was overpaid benefits in the amount of \$3,367.00. These benefits are subject to recovery. The application of a 15% penalty due to misrepresentation was not warranted and shall be removed.



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Jennifer L. Beckman  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
Iowa Workforce Development  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax 515-478-3528

July 26, 2021  
Decision Dated and Mailed

jlb/scn

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**NOTE TO CLAIMANT:** This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.

Individuals who do not qualify for regular unemployment insurance benefits, but who are unemployed or continue to be unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits. On May 11, 2021, Governor Reynolds announced that Iowa will end its participation in federal pandemic-related unemployment benefit programs effective June 12, 2021. The last payable week for PUA in Iowa will be the week ending June 12, 2021. Additional information can be found in the press release at <https://www.iowaworkforcedevelopment.gov/iowa-end-participation-federal-unemployment-benefit-programs-citing-strong-labor-market-and>.

You may find information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>

Iowa Finance Authority also has additional resources at <https://www.iowafinance.com/about/covid-19-ifa-recovery-assistance/>