

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NOEL J COLLINS
Claimant

APPEAL 20A-UI-05220-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA WORKFORCE DEVELOPMENT

OC: 05/03/20
Claimant: Appellant (1)

Iowa Code § 96.5(13) – Disqualification due to Outstanding Fraud Overpayment
Iowa Code § 96.16(4) – Offenses and Misrepresentation
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On June 3, 2020, Noel J. Collins (claimant/appellant) filed an appeal from the May 13, 2020, reference 01, Iowa Workforce Development (“IWD”) unemployment insurance decision which concluded the claimant was ineligible for unemployment insurance benefits due to an outstanding fraud overpayment balance. The parties were properly notified of the hearing. A telephone hearing was held on June 29, 2020. The claimant participated personally. IWD participated through the administrative record. The Department’s Exhibits D1 and D2 were admitted into the record. The administrative law judge took official notice of the claimant’s unemployment insurance benefits records.

ISSUES:

Is the claimant’s appeal timely?
Is the claimant ineligible for benefits due to an outstanding fraud overpayment balance?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed for unemployment insurance benefits effective October 19, 2014 and January 10, 2016. In the 2016 claim year, an investigatory audit was conducted regarding the claimant’s failure to report all wages while she filed weekly continued claims for benefits. The claimant was aware of the investigation, possible overpayment and penalties, and was offered the opportunity to speak with the investigator. Consequently, on May 5, 2016, the investigator issued an unemployment insurance decision, reference 07, to notify the claimant that she was overpaid benefits of \$3,452.49, including interest and a 15% penalty due to fraud. The claimant did not appeal the decision and it became final.

The claimant then established a claim with an effective date of May 3, 2020. Effective July 1, 2018, a claimant with an overpayment by reason of misrepresentation is disqualified to receive unemployment insurance benefits until the overpayment interest and associated fees and penalties are paid in full. Iowa Code section 96.5(13). To date, the claimant has paid \$4,055.28

due to income tax and benefit offsets. The claimant still has an outstanding balance of \$1,345.85, which includes a non-fraud overpayment of \$1,292.00 established May 26, 2016; \$10.49 of the original fraud overpayment; and, penalties of \$43.36 related to the fraud overpayment.

The unemployment insurance decision denying benefits was mailed to the claimant's address of record on May 13. She did not receive the decision. The first notice of disqualification was communication with IWD on June 3. The appeal was sent immediately after that communication.

REASONING AND CONCLUSIONS OF LAW:

I. Is the claimant's appeal timely?

For the reasons that follow the administrative law judge concludes the claimant's appeal is timely filed.

Iowa Code section 96.6(2) provides, in pertinent part:

Filing – determination – appeal.

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

The claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant filed an appeal within a reasonable period of time after discovering the disqualification. Therefore, the appeal shall be accepted as timely.

II. Is the claimant ineligible for benefits due to an outstanding fraud overpayment balance?

For the reasons that follow, the administrative law judge concludes that the claimant is ineligible for regular unemployment benefits until the balance of the benefits received by the claimant due to misrepresentation, including all penalties, interest, and lien fees are paid in full. Benefits are denied at this time.

Iowa Code section 96.16(4) provides:

Offenses.

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. 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

The undisputed evidence is the claimant participated in an investigatory audit in which resulted in IWD establishing an overpayment and imposing a penalty due to misrepresentation/fraud. The claimant did not appeal the decision or inquire about the overpayment or administrative penalty due to fraud/misrepresentation. The decision is final at this time. Therefore, the administrative law judge concludes the claimant has an established overpayment derived from fraud/misrepresentation.

Iowa Code section 96.5(13) provides:

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

13. Overpayment resulting in disqualification. If the department finds that an individual has received benefits by reason of misrepresentation pursuant to section 96.16, such individual shall be disqualified for benefits until the balance of the benefits received by the individual due to misrepresentation, including all penalties, interest, and lien fees, is paid in full.

Based on the evidence presented, the administrative law judge concludes the claimant currently owes a balance of \$53.85 due to the decision issued on May 5, 2016 which found that the claimant was overpaid benefits and engaged in misrepresentation pursuant to Iowa Code § 96.16(4). Because this fraud balance remains unpaid in full, the claimant is not eligible for regular benefits at this time.

DECISION:

Regular Unemployment Insurance Benefits Under State Law

The claimant's appeal is timely. The May 13, 2020, reference 01, unemployment insurance decision is affirmed. The claimant is ineligible for regular unemployment benefits. Benefits are withheld until the claimant has paid the unpaid fraud overpayment balance, plus penalties, interest, and lien fees, provided the claimant is otherwise eligible.

Pandemic Unemployment Assistance (PUA) Under the Federal CARES Act

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, she may be eligible for federally funded unemployment insurance benefits under the CARES Act. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that, in general, provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount in FPUC. This decision does not address whether the claimant is eligible for PUA. For a decision on such eligibility, the claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" at the end of the decision.



Stephanie R. Callahan
Administrative Law Judge

July 21, 2020
Decision Dated and Mailed

src/scn

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 currently 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.