

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JOEL RICHMOND**  
Claimant

**APPEAL 18A-UI-08286-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 11/23/14  
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, Joel Richmond, filed an appeal from the July 26, 2018, (reference 04), Iowa Workforce Development (“IWD”) unemployment insurance decision which concluded the claimant was overpaid \$18,639.00 in unemployment insurance benefits because he failed to accurately report earnings while filing weekly continued claims for unemployment insurance benefits. IWD also imposed a 15% administrative penalty (\$2,795.85) due to misrepresentation.

The parties were properly notified of the hearing. A telephone hearing was held on August 24, 2018. The claimant, Joel Richmond, attended the hearing but did not testify. He was represented by Dustin Hite, attorney at law.

IWD was represented by David J. Steen, attorney at law. Troy Shelly, Investigator, testified. IWD Exhibits A-C 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 claims for unemployment insurance benefits with effective dates of November 23, 2014, November 22, 2015, and November 20, 2016 (Department Exhibit A5).

When the claim was established each year, the claimant was given the option of reading the Unemployment Insurance Handbook online or a hardcopy (Department Exhibit A2). 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. The claimant did not read the handbook in connection with establishing his claims for unemployment insurance benefits (Department Exhibit B12).

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 B1)

The handbook also alerted the claimant 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 B4)

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 B2).

IWD conducted an audit and discovered that Mr. Richmond earned wages from Reilly Construction Co. Inc. during the time period of May 3, 2015 through July 7, 2018, but failed to report all the wages. During this period, the claimant was also filing weekly continued claims to receive unemployment insurance benefits. IWD contacted the Reilly Construction Co. Inc. on June 28, 2018 to verify the claimant's wages earned with the employer (Department Exhibit A3).

A review of the administrative file reflects the claimant did not report the same wages as the employer (Department Exhibits A3, A4, B7). During the period of May 3, 2015 through July 7, 2018, on fifty-two occasions, the claimant underreported the wages he earned for the week with the employer. For six of the fifty-two weeks, the claimant reported he earned \$0.00 in wages, when he filed his weekly continued claim (Department Exhibit B7), even though he was

performing work each week. These weeks were April 1, 2017, April 8, 2017, November 25, 2017, March 10, 2018, May 5, 2018, and June 9, 2018.

As a result of the employer's verification of wages, Investigator Shelley also contacted the claimant. The claimant was mailed a notice to report on July 11, 2018, which stated he may have been overpaid benefits in the amount of \$18,639.00, for failing to report his wages (Department Exhibit A6(2)). The letter also informed Mr. Richmond that an overpayment may result in consequences including a 15% penalty (Department Exhibit A6(2)).

The claimant met with Mr. Shelley on July 23, 2018 at the Ottumwa IWD office (Department Exhibit B12). The claimant did not provide evidence that the wages reported by the employer were inaccurate. During the interview, the claimant reported his wife often made his weekly continued claim on his behalf (Department Exhibit B12). The claimant also stated he would purposefully over-report his wages earned for weeks, not intending to collect benefits, but to simply keep the claim open and active (Department Exhibit B12). No evidence was presented at the hearing regarding how he calculated the wages to be reported each week or why on six weeks no wages were reported even though the claimant performed work.

After Investigator Shelley's interview with the claimant, he again contacted the employer, who provided paystubs for the period of time covering the audit (A4) to verify all wages earned.

Because the claimant did not accurately report his wages during this same period, an overpayment of \$18, 639.00 was determined by IWD (Department Exhibit A5). The agency established the overpayment based upon the following incorrect payments made to the claimant: (Department Exhibit A5)

	Wages Reported By		UI Benefits		Overpayment
Week Ending	Claimant	Employer	Amount Paid	Entitled	
05/09/2015	\$100	\$225	\$448	\$335	\$113
09/12/2015	\$300	\$780	\$260	\$0	\$260
10/31/2015	\$200	\$435	\$360	\$125	\$235
11/21/2015	\$100	\$191	\$448	\$369	\$79
2/20/2016	\$350	\$642	\$228	\$0	\$228
03/05/2016	\$150	\$245	\$428	\$333	\$95
04/02/2016	\$250	\$509	\$328	\$0	\$328
04/23/2016	\$300	\$497	\$278	\$0	\$278
04/30/2016	\$300	\$488	\$278	\$0	\$278
05/14/2016	\$150	\$165	\$428	\$413	\$15
07/09/2016	\$150	\$437	\$428	\$141	\$287
07/30/2016	\$200	\$482	\$378	\$0	\$378
8/13/2016	\$375	\$722	\$203	\$0	\$203
12/10/2016	\$100	\$1620	\$480	\$0	\$480
12/17/2016	\$100	\$2190	\$480	\$0	\$480
12/17/2016	\$100	\$1218	\$480	\$0	\$480
01/14/2017	\$100	\$1017	\$480	\$0	\$480
02/04/2017	\$100	\$1368	\$480	\$0	\$480
02/25/2017	\$100	\$607	\$480	\$0	\$480
03/11/2017	\$100	\$1429	\$480	\$0	\$480
03/25/2017	\$100	\$2002	\$480	\$0	\$480
04/01/2017	\$0	\$521	\$480	\$0	\$480
04/08/2017	\$0	\$280	\$480	\$320	\$160
04/15/2017	\$300	\$1222	\$300	\$0	\$200
05/06/2017	\$400	\$1444	\$200	\$0	\$300
05/20/2017	\$300	\$970	\$300	\$0	\$300
05/27/2017	\$300	\$1190	\$300	\$0	\$400
07/01/2017	\$200	\$1160	\$400	\$0	\$400
07/22/2017	\$200	\$850	\$400	\$0	\$480
08/05/2017	\$100	\$1570	\$480	\$0	\$480
08/26/2017	\$100	\$1243	\$480	\$0	\$480
09/02/2017	\$100	\$1517	\$480	\$0	\$480
09/09/2017	\$100	\$1517	\$480	\$0	\$480
09/23/2017	\$100	\$700	\$480	\$0	\$20
09/30/2017	\$100	\$1813	\$20	\$0	\$20
11/25/2017	\$0	\$809	\$490	\$0	\$490
12/02/2017	\$100	\$1633	\$490	\$0	\$490

12/16/2017	\$100	\$1702	\$490	\$0	\$490
01/13/2018	\$100	\$841	\$490	\$0	\$490
02/03/2018	\$80	\$1346	\$490	\$0	\$490
02/10/2018	\$80	\$1346	\$490	\$0	\$490
03/10/2018	\$0	\$1436	\$490	\$0	\$490
03/31/2018	\$100	\$1294	\$490	\$0	\$490
04/07/2018	\$100	\$1141	\$490	\$0	\$490
04/14/2018	\$200	\$1362	\$412	\$0	\$412
04/21/2018	\$300	\$834	\$312	\$0	\$312
05/05/2018	\$0	\$707	\$490	\$0	\$490
05/19/2018	\$200	\$983	\$412	\$0	\$412
05/26/2018	\$500	\$1213	\$112	\$0	\$112
06/09/2018	\$0	\$719	\$490	\$0	\$490
06/30/2018	\$500	\$983	\$112	\$0	\$112
07/07/2018	\$300	\$838	\$312	\$0	\$312
				Overpayment	\$18,639.00
				15% penalty	\$2,795.85
				Total	\$21,434.85

In addition to the overpayment, a 15% penalty (\$2,795.85) was imposed, due to the overpayment arising from the claimant's misrepresentation or intentional omission of wages to collect benefits. On six occasions, the claimant responded to his weekly continued claim that he had not performed any work and that he did not earn any wages. In addition, on forty-six other weeks audited, the claimant underreported his wages, allowing him to collect benefits for which he was not entitled. No evidence was presented by the claimant to refute the imposition of the additional penalty, or to explain how or why the wages were reported by the claimant or his wife each week.

#### 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.

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.

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 (Department Exhibit B1). When the claimant established his claim for benefits each of the three years covered within the audit period, he agreed he would read the Unemployment Insurance Handbook, which he did not do (Department Exhibit B12). The Unemployment Insurance Handbook explained the reporting process and consequences for failure to accurately provide information in conjunction with claims for unemployment insurance benefits. The claimant was responsible for ensuring he understood the process each week he submitted a weekly continued claim. The claimant is also reminded that he may receive assistance in filing of his claim through family, but that he is ultimately responsible for his claim being accurately and successfully transmitted each week he seeks to claim benefits.

However, the claimant unreported his wages, representing he was unemployed (or partially unemployed) as he filed weekly continued claims for unemployment insurance benefits during the same time (Department Exhibit B7). 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 \$18,639.00, to which he was not entitled (Department Exhibit A5). 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 knowingly 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) provides:

4. Misrepresentation.

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

Each week the claimant made a weekly continued claim (or allowed his wife to on his behalf), he/she agreed that the information being provided was truthful and entering false information can result in loss of benefits, fines and imprisonment (Department Exhibit B2). 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 Reilly Construction Co. Inc. when he filed for unemployment insurance benefits. On fifty-two occasions, the claimant underreported wages earned which allowed him to collect benefits. At a minimum, on six separate occasions, the claimant reported he earned \$0.00 in wages but in fact performed work (Department A4). This was blatantly false. The claimant’s repeated and intentional concealment of wages led to the claimant receiving an overpayment of unemployment insurance benefits. The claimant failed to present any evidence to mitigate the imposition of additional penalty due to misrepresentation or fraud.

Therefore, based on the evidence presented, 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 May 3, 2015 through July 7, 2018, 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 July 26, 2018, (reference 04), unemployment insurance decision is affirmed. The claimant was overpaid benefits. IWD correctly imposed the administrative penalty due to the claimant’s misrepresentation.

---

Jennifer L. Beckman  
Administrative Law Judge

---

Decision Dated and Mailed

jlb/scn