

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MICHAEL L HOCKENBERRY**  
Claimant

**APPEAL 22A-UI-03152-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

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

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

**STATEMENT OF THE CASE:**

On January 13, 2022, Michael Hockenberry (claimant/appellant) filed an appeal from the January 5, 2022 (reference 05) Iowa Workforce Development (“IWD”) decision which concluded the claimant was overpaid Lost Wage Assistance Payments in the amount of \$1,500.00 for the five-week period between July 26 and August 29, 2020. A 15 percent penalty was added based on a finding of misrepresentation.

The parties were properly notified of the hearing. A telephone hearing was held on March 2, 2022. The claimant participated personally and was represented by Attorney Marlon Mormann. Kathryne Huhn participated as a witness for claimant. IWD participated by Investigator II Kasandra Ellenwood and was represented by Attorney Jeffrey Koncsol.

Claimant’s Exhibits 1-13 were offered. Exhibits 10-13 were admitted. The administrative law judge determined the other exhibits were irrelevant and excluded them. Mr. Moorman made an offer of proof on those exhibits. IWD’s Exhibits A-D were offered. Exhibits A-C were admitted. The administrative law judge determined the other exhibit was irrelevant and excluded it. The administrative law judge took official notice of the administrative record.

**ISSUE(S):**

Was the claimant overpaid Lost Wage Assistance Payments (LWAP)?

Was the penalty properly imposed?

**FINDINGS OF FACT:**

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

Claimant filed a claim for benefits with an effective date of March 15, 2020. Claimant filed weekly continued claims for benefits for the benefit week ending March 21, 2020 through the benefit week ending October 10, 2020. Claimant did not report earning wages in any of those weeks, although he was working full-time for Berkley Insurance Company and earning wages of approximately

\$1,000.00 during each week filed. Claimant did not report these wages as required. Had claimant properly reported his wages earned each week he would not have been eligible for state or federal benefits in any of the weeks filed.

The administrative record shows that during the period in question claimant received state unemployment insurance benefits (UI) in the amount of \$12,506.00. He also received Federal Pandemic Unemployment Compensation (FPUC) in the amount of \$10,200; Pandemic Emergency Unemployment Compensation (PEUC) in the amount of \$1,924.00; and Lost Wage Assistance Payments (LWAP) in the amount of \$1,500.00. The total amount of benefits paid to claimant during this period was \$26,130.00.

Claimant did not knowingly or intentionally misrepresent his wages or seek to defraud IWD of benefits not due to him. Claimant did not report the wages earned from Berkley when he filed each week because he erroneously believed his claim was solely relating to his separation from part-time employment with Menard Inc. Claimant contacted IWD on several occasions to explain his circumstances and was not notified in those communications that he was filing his weekly claims incorrectly.

Notably, the investigation by IWD was spurred in large part by claimant immediately reaching out to IWD after learning from Berkley's HR that a fraudulent claim for benefits may have been made using his Social Security number. This resulted in further investigation by IWD, including the wage audit and issuance of overpayment decisions. Claimant's conduct in immediately reaching out to IWD when learning there may have been a fraudulent claim is inconsistent with an intent to misrepresent or defraud.

IWD's finding of fraud and/or misrepresentation was based on claimant's acknowledging before filing his claim that he had read and understood the claimant's handbook and his indicating when filing each week that he did not earn wages. Based on this, IWD imputed knowledge and/or intent to claimant: that he knew he was required to report all wages when he filed each week and he intentionally did not do so.

The claimant handbook does not explicitly address the circumstances where a claimant loses a part-time job but continues to work full time. The handbook does direct claimants to "report all gross earnings and gross wages on the weekly claim."

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

For the reasons set forth below, the January 5, 2022 (reference 05) Iowa Workforce Development ("IWD") decision is MODIFIED in favor of claimant.

### **I. Was the claimant overpaid LWAP?**

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.

On August 8, 2020, President Trump issued a memorandum to provide additional financial assistance to those individuals receiving unemployment benefits that met the eligibility requirements of the program through a grant from FEMA. The LWA program required claimants to be eligible for a weekly benefit amount of at least \$100.00 and the LWA payment was made to claimants in combination with a payment of at least \$1.00 in benefits stemming from either State of Iowa funded unemployment insurance benefits, Federal Pandemic Emergency Unemployment Compensation (PEUC) benefits program, Pandemic Unemployment Assistance (PUA) program, Extended Benefits program, Voluntary Shared Work program, Short Term Compensation program, or Trade Act benefits program. The weekly benefit amount of the LWA program was \$300.00 and it ran from July 26, 2020 through September 5, 2020. Therefore, if a claimant was not eligible for weekly benefits from an underlying program, they were not eligible for LWA benefits as a weekly supplemental benefit.

*The Memorandum on Authorizing the Other Needs Assistance Program for Major Disaster Declarations Related to Coronavirus Disease 2019* provided in pertinent part:

Sec 4. Assistance Program for Lost Wages.

- (a) For purposes of this memorandum, "State" includes the territories and the District of Columbia, and "Governor" includes the chief executive thereof.
- (b) To help meet the needs of the American people during this unprecedented and continuously evolving public health crisis, the Secretary of Homeland Security (Secretary), acting through the FEMA Administrator, is authorized to make available other needs assistance for lost wages, in accordance with section 408(e)(2) of the Stafford Act (42 U.S.C. 5174(e)(2)) ("lost wages assistance"), to the people of a State, including the members of any tribe residing therein, if the Governor requests lost wages assistance and agrees to administer delivery and provide adequate oversight of the program, for a major disaster I declared pursuant to section 401 of the Stafford Act (42 U.S.C. 5170) for COVID-19, under the following conditions:
  - (i) the Governor requests from the FEMA Administrator a grant for lost wages assistance pursuant to 42 U.S.C. 5174(f)(1)(A) and agrees to the cost-sharing requirement of 42 U.S.C. 5174(g)(2); and
  - (ii) the Governor administers delivery of financial assistance for lost wages in conjunction with the State's unemployment insurance system.
- (c) In exercising this authority, the Secretary, acting through the FEMA Administrator, shall, subject to the limitations above, approve a lost wages assistance program that authorizes the Governor to provide a \$400 payment per week, which shall reflect a \$300 Federal contribution, to eligible claimants from the week of unemployment ending August 1, 2020.
- (d) For purposes of this memorandum, the term "Eligible claimants" means claimants who:
  - (i) receive, for the week lost wages assistance is sought, at least \$100 per week of any of the following benefits:
    - (A) Unemployment compensation, including Unemployment Compensation for Federal Employees (UCFE) and Unemployment Compensation for Ex-Service members (UCX), under section 8501 of title 5, United States Code;
    - (B) Pandemic Emergency Unemployment Compensation (PEUC), under section 2107 of the CARES Act;
    - (C) Pandemic Unemployment Assistance (PUA), under section 2102 of the CARES Act;
    - (D) Extended Benefits (EB), under section 3304 of title 26, United States Code;

- (E) Short-Time Compensation (STC), under section 3306(v) of title 26, United States Code;
- (F) Trade Readjustment Allowance (TRA), under sections 2291 through 2293 of title 19, United States Code; and
- (G) Payments under the Self-Employment Assistant (SEA) program, under section 3306(t) of title 26, United States Code; and
- (ii) provide self-certification that the claimant is unemployed or partially unemployed due to disruptions caused by COVID-19.
- (e) The authority vested in the Secretary, acting through the FEMA Administrator, to approve lost wages assistance shall not be construed to encompass authority to approve other forms of assistance.

The state is responsible for refunding to FEMA any unobligated balances that FEMA paid that are not authorized to be retained per 2 C.F.R. 200.343(d) and the state is also responsible for recovering assistance awards from claimants obtained fraudulently. See UIPL No. 27-20 Change 1 dated August 17, 2020 citing 44 C.F.R. 206.120(f)(4 and 5).

44 C.F.R. § 206.16 provides as follows:

- (a) The applicant must agree to repay to FEMA (when funds are provided by FEMA) and/or the State (when funds are provided by the State) from insurance proceeds or recoveries from any other source an amount equivalent to the value of the assistance provided. In no event must the amount repaid to FEMA and/or the State exceed the amount that the applicant recovers from insurance or any other source.
- (b) An applicant must return funds to FEMA and/or the State (when funds are provided by the State) when FEMA and/or the State determines that the assistance was provided erroneously, that the applicant spent the funds inappropriately, or that the applicant obtained the assistance through fraudulent means.

Claimant received LWAP in the amount of \$1,500.00. He was subsequently determined to be ineligible for benefits and overpaid UI benefits during the relevant period due to failing to report wages. Because claimant was ineligible for UI during the weeks he received LWAP he was also ineligible for LWAP in those weeks. Claimant was therefore overpaid LWAP in the amount of \$1,500.00.

## II. Was the penalty properly imposed?

Iowa Code section 96.16(4) provides:

### 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. (emphasis added).

Iowa Code section 96.5(8) provides:

Administrative penalty. If the department finds that, with respect to any week of an insured worker’s unemployment for which such person claims credit or benefits, such person has, within the thirty-six calendar months immediately preceding such week, **with intent to defraud by obtaining any benefits not due under this chapter, willfully and knowingly made a false statement or misrepresentation, or willfully and knowingly failed to disclose a material fact**; such person shall be disqualified for the week in which the department makes such determination, and forfeit all benefit rights under the unemployment compensation law for a period of not more than the remaining benefit period as determined by the department according to the circumstances of each case. Any penalties imposed by this subsection shall be in addition to those otherwise prescribed in this chapter. (emphasis added).

Iowa Admin. Code 871—25.1, Definitions, provides in relevant part:

“Administrative penalty” means the disqualification of a claimant from the receipt of benefits due to fraud or misrepresentation or the willful and knowing failure to disclose a material fact for a period of not more than the remaining benefit year, including the week in which such determination is made.

“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.

“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.

“Overpayment” means the amount of unemployment insurance benefits erroneously paid to a claimant due to error, misrepresentation, or fraud.

The administrative law judge finds IWD has not proven that the imposition of a 15 percent penalty was proper. Iowa Code 96.16(4)a provides that an individual who obtains benefits “by reason of nondisclosure or **misrepresentation** by the individual...of a material fact” is liable to repay the overpayment and the Department may seek to recover the overpayment through the filing of a lien. Section 96.16(4)b goes further and mandates a 15 percent penalty for a “**fraudulent** overpayment” and mandates that amount be added to any lien filed pursuant to 96.16(4)a.

The administrative law judge finds an overpayment must be “fraudulent” for a 15 percent penalty to attach. The overpayment here was not “fraudulent.” Claimant did not knowingly or intentionally

misrepresent his wages or seek to defraud IWD of benefits not due to him. Claimant did not report the wages earned from Berkley when he filed each week because he erroneously believed his claim was solely relating to his separation from part-time employment with Menard Inc. His conduct was at worst negligent. As such imposition of a 15 percent penalty was improper.

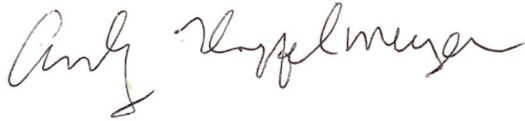
Claimant's acknowledgement of reading and understanding the claimant handbook and his subsequent failure to report wages is not dispositive on this issue. This is in part because the claimant handbook does not explicitly address the circumstances where a claimant loses a part-time job but continues to work full time. And while the handbook does direct claimants to "report all gross earnings and gross wages on the weekly claim," a layperson who is unfamiliar with the unemployment insurance system could misinterpret that direction and believe they need only report earnings from the employment which caused the claimant to file for benefits. It is a common misconception among claimants that they are filing "against" a specific employer.

Furthermore, claimant's subsequent conduct – specifically his reaching out to IWD after learning from Berkley's HR that a fraudulent claim for benefits may have been made using his Social Security number – strongly weighs against a finding that claimant had any ill intent. Claimant also credibly testified that he contacted IWD on several occasions to explain his circumstances and was not notified in those communications that he was filing his weekly claims incorrectly.

Whether the agency determines that the claimant may be further penalized in the 36 calendar months following the last week of misrepresentation as noted under Iowa Code §§ 96.5(8) and 96.16(4) as stated in the decision is not determined at this time. Should the agency determine a further penalty pursuant to Iowa Code § 96.5(8), a separate, appealable decision must be entered and forwarded to the claimant. If that occurs, the claimant may appeal that decision at that time.

**DECISION:**

The January 5, 2022 (reference 05) Iowa Workforce Development ("IWD") decision is MODIFIED in favor of claimant. Claimant was overpaid LWAP in the amount of \$1,500.00. That amount is subject to recovery. However, the 15 percent penalty was not properly imposed for the reasons set forth above.



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March 21, 2022

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Decision Dated and Mailed

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