

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALENA A BARNES
Claimant

APPEAL 18A-UI-11525-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 01/08/17
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, Alena A. Barnes, filed an appeal from the November 19, 2018 (reference 09) Iowa Workforce Development (“IWD”) unemployment insurance decision which concluded the claimant was overpaid unemployment insurance benefits because she failed to accurately report earnings while concurrently filing weekly continued claims for unemployment insurance benefits. IWD also stated a 15% administrative penalty may be added due to misrepresentation.

The parties were properly notified of the hearing. Prior to the hearing, the claimant made an untimely request for postponement and it was denied. A telephone hearing was held on December 13, 2018. The claimant, Alena A. Barnes, participated personally. Kasandra Ellenwood, Investigator II, participated on behalf of IWD, and was represented by David Steen, attorney at law. IWD Exhibits A-M 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 a claim for unemployment insurance benefits with an effective date of January 8, 2017. The claimant began a claim for benefits after separation with AT&T, and continued filing weekly claims each week even though she worked full-time. The claimant worked for Volt Management Corporation from January 24, 2017 until May 7, 2017. She then worked for Group

O Inc. from May 7, 2017 until August 24, 2017. She did not perform work from August 25, 2017 until she began new employment on September 25, 2017 with United Healthcare Services Inc.

When the claim was established the claimant was given the option of reading the Unemployment Insurance Handbook online or a hardcopy. The claimant indicated she would view the Handbook online (Department Exhibit H). 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.

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

The handbook also provides in part:

Overpayment

Individuals are responsible for repaying any benefits they were not eligible to receive. Future UI benefit payments are withheld until the overpayment has been recovered in full. If the individual is not making attempts to repay the overpayment, the debt may be recovered by withholding state and federal tax refunds, casino and lottery winnings, and vendor payments. Overpayments caused by fraud include a 15% penalty.

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 I)

IWD conducted an audit and discovered that Ms. Barnes received wages from all three employers during the time period of January 22, 2017 through October 21, 2017, but failed to report all wages earned each week when also filing claims for unemployment insurance benefits. IWD first contacted the employers to verify the claimant's wages earned (Department Exhibits C5, C6, C7, C8, C9).

A review of the administrative file reflects the claimant did not report the same wages as the employers. During the period of January 22, 2017 through October 21, 2017, on a few weeks, the claimant correctly reported or over-reported her wages (Department Exhibits C2, C3, C4). The remainder of weeks claimed during this week, the claimant underreported her wages. Specifically, for four consecutive weeks for the weeks ending September 30, 2017 through

October 21, 2017, the claimant reported she earned \$0.00 in wages but earned \$611.00 each week as she worked full-time at United Healthcare Services (Department Exhibits C4, F).

As a result of the employer's verification of wages, Investigator Ellenwood also contacted the claimant. The claimant was mailed a notice to report, which stated she may have been overpaid benefits in the amount of \$4,381.00, for failing to report her wages (Department Exhibit C). The letter also informed her that an overpayment may result in consequences including a 15% penalty (Department Exhibit C).

The claimant contacted Investigator Ellenwood on November 5, 2018 and November 14, 2018, in response to the letter. The claimant did not provide evidence that the wages reported by the employer were inaccurate. The claimant's explanation for how she reported her wages was that she believed she was entitled to unemployment insurance benefits if she accepted new employment after AT&T, and earned less than \$18.57 per hour, which was her pay rate at AT&T. So each week the claimant reported her wages intending to receive an offset of unemployment insurance benefits, to equal her former wages. With respect to the discrepancies in wages, the claimant stated she earned \$10.00 per hour and usually worked 40 hours, so she would often report \$400.00. She did not adjust her wage amount for weeks she had to close at work or stay late due to business needs. She had no explanation for why she reported \$0.00 in wages for four weeks after beginning employment with United Healthcare Services Inc., except she denied reporting \$0.00 each week. The claimant asserted she reported her wages each week while employed full-time based upon information given to her by Iowa Workforce Development customer service. She had no other details available about who or when she obtained such information.

The claimant's weekly benefit amount was \$480.00 (Department Exhibits C2, C3, C4). Because the claimant did not accurately report her wages during this same period, an overpayment of \$4,002.00 was determined by IWD (Department Exhibit B). The agency established the overpayment based upon the following incorrect payments made to the claimant: (Department Exhibits C2, C3, C4)

Week Ending	Wages Reported By		UI Benefits		Underpayment	Overpayment
	Claimant	Employer	Amount Paid	Entitled		
01/28/17	\$10.00	\$325.00	\$480.00	\$275.00		\$205.00
02/04/17	\$400.00	\$400.00	\$200.00	\$200.00		
02/11/17	\$400.00	\$403.00	\$200.00	\$197.00		\$3.00
02/18/17	\$400.00	\$444.00	\$200.00	\$156.00		\$44.00
02/25/17	\$400.00	\$426.00	\$200.00	\$174.00		\$26.00
03/04/17	\$400.00	\$444.00	\$200.00	\$156.00		\$44.00
03/11/17	\$400.00	\$446.00	\$200.00	\$154.00		\$46.00
03/18/17	\$400.00	\$415.00	\$200.00	\$185.00		\$15.00
03/25/17	\$400.00	\$445.00	\$200.00	\$155.00		\$45.00
04/01/17	\$360.00	\$391.00	\$240.00	\$209.00		\$31.00
04/08/17	\$300.00	\$422.00	\$300.00	\$178.00		\$122.00
04/15/17	\$320.00	\$411.00	\$280.00	\$189.00		\$91.00
04/22/17	\$400.00	\$564.00	\$200.00	\$0.00		\$200.00

04/29/17	\$400.00	\$434.00	\$200.00	\$166.00		\$34.00
05/06/17	\$400.00	\$361.00	\$200.00	\$239.00	\$39.00	
05/13/17	\$400.00	\$523.00	\$200.00	\$0.00		\$200.00
05/20/17	\$400.00	\$541.00	\$200.00	\$0.00		\$200.00
05/27/17	\$320.00	\$540.00	\$280.00	\$0.00		\$280.00
06/03/17	\$320.00	\$380.00	\$280.00	\$220.00		\$60.00
06/10/17	\$320.00	\$300.00	\$280.00	\$300.00	\$20.00	
06/17/17	\$320.00	\$400.00	\$280.00	\$200.00		\$80.00
06/24/17	\$320.00	\$424.00	\$280.00	\$176.00		\$104.00
07/01/17	\$320.00	\$413.00	\$280.00	\$187.00		\$93.00
07/08/17	\$250.00	\$252.00	\$350.00	\$348.00		\$2.00
07/15/17	\$320.00	\$438.00	\$280.00	\$0.00		\$280.00
07/22/17	\$320.00	\$405.00	\$280.00	\$195.00		\$85.00
07/29/17	\$320.00	\$390.00	\$280.00	\$210.00		\$70.00
08/05/17	\$320.00	\$439.00	\$280.00	\$161.00		\$119.00
08/12/17	\$320.00		\$280.00	\$480.00	\$200.00	
08/19/17	\$240.00		\$360.00	\$480.00	\$120.00	
08/26/17	\$150.00	\$212.00	\$450.00	\$388.00		\$62.00
09/02/17	\$80.00		\$480.00	\$480.00		
09/09/17	\$0.00		\$480.00	\$480.00		
09/16/17	\$0.00		\$480.00	\$480.00		
09/23/17	\$0.00		\$480.00	\$480.00		
09/30/17	\$0.00	\$611.00	\$480.00	\$0.00		\$480.00
10/07/17	\$0.00	\$611.00	\$480.00	\$0.00		\$480.00
10/14/17	\$0.00	\$611.00	\$480.00	\$0.00		\$480.00
10/21/17	\$0.00	\$611.00	\$400.00	\$0.00		\$400.00
					\$379.00	\$4,381.00
				TOTAL		\$4,002.00

In addition to the overpayment, the claimant was alerted that a 15% penalty may be imposed, due to the overpayment arising from the claimant's misrepresentation or intentional omission of wages to collect benefits (Department Exhibit B, C). On four occasions, the claimant responded to her weekly continued claim that she had not performed any work and that she did not earn any wages when she in fact worked full-time, earning \$661.00 each week. The claimant argued that a penalty should not be imposed because she thought she properly reported her wages 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 she must report all wages earned each week that she sought to claim unemployment insurance benefits, and that failure to properly do so, could result in an overpayment, which she must repay (Department Exhibits H, I). However, the claimant repeatedly underreported her wages, and misrepresented she was unemployed four consecutive weeks as she filed weekly continued claims for unemployment insurance benefits during the same time (Department Exhibits C4, F). The claimant acknowledged she did not adjust wages reported for weeks she had to stay late at work or any other reason for the discrepancy.

No evidence was presented that the wages reported by the employers 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 \$4,002.00, to which she was not entitled (Department Exhibit B). 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) 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 administrative law judge concludes the claimant knowingly omitted material information to IWD when she failed to correctly report her wages earned when she filed for unemployment insurance benefits. From the wages reported by the claimant there appears to not have been any pattern to her reporting the wages, such as reporting one week late or reporting net wages instead of gross, which are common errors. Even if the claimant erroneously believed she should be entitled to unemployment insurance benefits for being underemployed by her three employers after AT&T, she did not accurately report wages each week, which impacted the benefits she received.

Further, on four separate occasions, the claimant reported she earned \$0.00 in wages but in fact performed work (Department C4). This was blatantly false. Based on the evidence presented, the administrative law judge concludes the claimant’s repeated and intentional concealment of wages led to the claimant receiving an overpayment of unemployment insurance benefits.

Therefore, the administrative law judge concludes the calculated overpayment was correct, and the claimant knowingly omitted material information to IWD when she failed to correctly report wages earned for the period January 22, 2017 through October 21, 2017, 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 is warranted.

DECISION:

The November 19, 2018 (reference 09) unemployment insurance decision is affirmed. The claimant was overpaid benefits in the amount of \$4,002.00. An administrative penalty of 15% is warranted due to the claimant’s misrepresentation.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn