

IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU

TRISTAN A CHOWN
Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL 22A-UI-04145-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20
Claimant: Appellant (4)

Iowa Code § 96.3(7) – Overpayment of Benefits
Iowa Code § 96.16(4) – Offenses and Misrepresentation
Iowa Admin. Code r. 871-25.1 & 9 – Misrepresentation & Fraud
Iowa Code § 96.5(8)-Administrative Penalty
Iowa Admin. Code r. 871-24.18- Wage Earning Limits

STATEMENT OF THE CASE:

On February 6, 2022, the claimant/appellant filed an appeal from the January 27, 2022 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that found claimant was overpaid regular unemployment insurance benefits funded by the State of Iowa in the amount of \$3,581.86 for the weeks between April 19, 2020 and August 8, 2020, because claimant failed to report wages earned with The HON Company, LLC. IWD imposed a 15% administrative penalty due to misrepresentation. The parties were properly notified of the hearing. A telephone hearing was held on June 20, 2022. The claimant participated through attorney Beau Bergmann. Elizabeth Volious participated on behalf of IWD through attorney Jeffery Koncsol. IWD Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 were admitted. Claimant’s exhibits A, B, C, and D were admitted. The administrative law judge took official notice of the claimant’s unemployment insurance benefits records. This hearing was consolidated with Appeals 22A-UI-04146-CS-T; 22A-UI-04147-CS-T; 22A-UI-04148-CS-T; and 22A-UI-12453-CS-T.

ISSUES:

- I. Did IWD correctly determine that claimant was overpaid regular unemployment insurance benefits and was the overpayment amount correctly calculated?
- II. Did IWD properly impose a penalty based upon 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 April 5, 2020. His weekly benefit amount was \$351.00 based upon the wages reported in his base period. Weekly-continued claims were filed on claimant’s behalf beginning April 11, 2020 consecutively each week through October 31, 2020. Claimant then filed again for benefits the week ending February 20, 2021. Regular unemployment insurance benefits funded by the State of Iowa were paid on

claimant's behalf in the amount of \$5,537.86 from April 11, 2020, through August 8, 2020, when he reached his maximum benefit amount.

In October 2021, IWD conducted an audit and requested wages records from The HON Company. (Exhibit 3, pg. 4-5). Claimant agrees that he worked the hours reported and earned the wages reported by his employer in Exhibit 3, pg. 4-5.

Claimant acknowledges that he filed for benefits the weeks ending April 11, 2020, April 18, 2020, May 2, 2020, May 16, 2020, May 30, 2020, October 31, 2020, and February 20, 2021. Claimant denies that he filed for benefits the remaining weeks that benefits were paid in his name. Claimant believes his ex-girlfriend filed for benefits in his name without his permission. Claimant denies receiving the benefits. Claimant filed a police report for the fraudulent claims and payments that were issued. There are no criminal charges pending against claimant's ex-girlfriend as a result of his report.

Claimant believes his ex-girlfriend obtained his Iowa Workforce Development Personal Identification Number (PIN) because it is a PIN that he commonly uses. Prior to filing for benefits claimant shared his commonly used PIN with his ex-girlfriend after he became hospitalized and needed someone to take care of his financial affairs. Claimant believes his ex-girlfriend filed continuing weekly claims and denies giving her permission to file them on his behalf.

Claimant initially had the unemployment benefits deposited on a debit card. After claimant took out the benefits he applied for he put the debit card in a closet because he did not want to carry it around with him. Claimant believes his ex-girlfriend took the card, filed the claims, and then withdrew the benefits. Eventually claimant discovered his ex-girlfriend had the debit card in her wallet. Claimant took the card from his ex-girlfriend. On October 12, 2020, the banking information was changed when the claim was filed so that benefits were deposited into Sutton Bank. Claimant denies having an account with Sutton Bank. When claimant filed for benefits for the week ending February 20, 2021, he acknowledges changing the direct deposit account to a Veridian bank account.

For the week ending April 11, 2020, claimant reported \$100.00 in gross wages earned. Claimant received \$338.00 in state unemployment benefits for the week. The employer reported claimant did not earn any income for the week. Claimant was underpaid \$13.00 in state unemployment benefits.

For the weeks ending April 18, 2020, May 2, 2020, and May 16, 2020 claimant and employer reported that claimant did not earn any income. Claimant received the full benefit amount each of these weeks.

For the week ending May 30, 2020, claimant reported \$0.00 in gross wages earned. Claimant received \$351.00 in state unemployment benefits. The employer reported claimant earned \$53.01 in vacation pay.

Claimant denies filing for and receiving the remaining \$3,528.86 in gross state unemployment benefits that were paid on behalf of claimant from April 25, 2020, through August 8, 2020.

Claimant's ex-girlfriend plead guilty to theft in the second degree as a result of stealing the identity of claimant's father and opening credit cards in his name and making unauthorized purchases. (Exhibits A-C).

Claimant testified that he did not read the Claimant Handbook when he filed his initial application for unemployment insurance benefits.

IWD imposed the 15% administrative penalty as a result of claimant sharing his PIN with his ex-girlfriend.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes IWD incorrectly calculated the claimant's overpayment of benefits and the 15% penalty due to misrepresentation was improperly imposed.

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.
- b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Iowa Admin. Code r. 871-24.18 provides:

Wage-earnings limitation. An individual who is partially unemployed may earn weekly a sum equal to the individual's weekly benefit amount plus \$15 before being disqualified for excessive earnings. If such individual earns less than the individual's weekly benefit amount plus \$15, the formula for wage deduction shall be a sum equal to the individual's weekly benefit amount less that part of wages, payable to the individual with respect to that week and rounded to the lower multiple of one dollar, in excess of one-fourth of the individual's weekly benefit amount.

Iowa Code section 96.16(4)(a) 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, 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.

Iowa Admin. Code r. 871- 25.1— Definitions.

“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.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness’s testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the Administrative Law Judge finds that claimant's testimony credible. Claimant credibly testified that he only filed for benefits the weeks ending April 11, 2020, April 18, 2020, May 2, 2020, May 16, 2020, May 30, 2020, October 31, 2020, and February 20, 2021. Claimant did not file for benefits the remaining weeks and did not receive the benefits. Claimant filed a criminal report for the fraudulent weeks that were filed in his name that he did not receive the benefits. Claimant credibly testified that he did not give his ex-girlfriend his PIN to file for benefits and that his ex-girlfriend had his debit card in her possession. Additionally, claimant denied having an account with Sutton Bank or changing the deposit account to Sutton Bank where a portion of the benefits were deposited. Since claimant did not receive the benefits he has not been overpaid. The administrative law judge finds claimant was not overpaid \$3,581.86 in state unemployment benefits from April 19, 2020, through August 8, 2020.

For the weeks that claimant acknowledges that he did file for benefits, the administrative law judge finds that claimant was underpaid \$13.00 for the week ending April 11, 2020. Claimant reported more income than he actually earned. Claimant did not earn any income the week ending April 11, 2020. As a result he is entitled to the full benefit amount for the week ending April 11, 2020.

The administrative law judge also finds that claimant was not overpaid \$53.00 for the week ending May 30, 2020. Claimant failed to report \$53.00 in vacation pay. A deduction will occur to a claimant's weekly benefit if claimant earns wages over 25% of his weekly benefit amount. In this case 25% of claimant's weekly benefit amount is \$87.75. The employer reported that claimant earned \$53.00 in vacation pay. Since claimant did not earn more than 25% of his weekly benefit amount a deduction does not occur. As a result claimant is entitled to a full weekly benefit amount.

There is no evidence that claimant knowingly made any false representations of a matter of fact that was intended to deceive IWD. IWD has not met its burden of proof establishing that claimant fraudulently filed for benefits or that he actually received the benefits. As a result, the administrative penalty was incorrectly imposed.

DECISION:

The January 27, 2022, (reference 01) unemployment insurance decision is MODIFIED in favor of appellant. The claimant is underpaid \$13.00 in state unemployment benefits. IWD incorrectly imposed the administrative penalty. The 15% administrative penalty imposed shall be removed.

A handwritten signature in black ink that reads "Carly Smith". The signature is written in a cursive, flowing style. The first name "Carly" is connected to the last name "Smith". There is a small horizontal line at the end of the signature.

Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

August 25, 2022
Decision Dated and Mailed

cs/mh

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

Employment Appeal Board

4th Floor – Lucas Building

Des Moines, Iowa 50319

Fax: (515)281-7191

Online: eab.iowa.gov

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

Employment Appeal Board

4th Floor – Lucas Building

Des Moines, Iowa 50319

Fax: (515)281-7191

En línea: eab.iowa.gov

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.