

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MEGAN J GESIE
Claimant

APPEAL NO. 20A-UI-08365-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
INVESTIGATIONS & RECOVERY**

OC: 04/19/20
Claimant: Appellant (4/R)

Iowa Code Section 96.3(7) – Recovery of Overpaid Benefits
Iowa Code Sections 96.5(8) and 96.16(4) – Misrepresentation Penalty & Administrative Penalty

STATEMENT OF THE CASE:

Megan Gesie filed a timely appeal from the July 13, 2020, reference 02, decision that held she had been overpaid \$4,189.00 in regular state benefits for nine weeks between April 19, 2020 and June 20, 2020 because she incorrectly reported wages earned with Veridian Credit Union. The reference 02 decision added a 15 percent penalty and a further administrative penalty for 36 calendar months following June 20, 2020. After due notice was issued, a hearing was held on August 27, 2020. Ms. Gesie participated. Danial Noonan, Investigator II, appeared on behalf of the Iowa Workforce Development Investigations and Recovery Unit/Integrity Bureau. Exhibits 1 through 5 and A were received into evidence. The administrative law judge took official notice of the following Agency administrative record: KCCO, DBRO, KPYX and WAGE-A.

ISSUE:

Whether the claimant was overpaid benefits.
Whether the overpayment was based on intentional misrepresentation and/or fraud and subjects the claimant to the penalties associated with fraud-based overpayments.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Megan Gesie established an original claim for benefits that was effective April 19, 2020. Ms. Gesie is a first-time claimant. Ms. Gesie established her claim for benefits in response to being temporarily laid off from her part-time employment with Thodes, Inc. Ms. Gesie is also employed by Veridian Credit Union as a full-time worker in the Account Resolution department. To establish the original claim for benefits, Ms. Gesie completed the usual online application process, which included inputting information and clicking on appropriate boxes. During the application process, Ms. Gesie clicked a box to acknowledge her obligation to read, know and follow the Unemployment Insurance Handbook. Ms. Gesie reviewed the handbook and thought she understood the information contained therein. Based on her belief that she understood what was expected of her in connection with the claim, Ms. Gesie did not contact Iowa Workforce Development with questions. Ms. Gesie was focused on her lost wages from the

part-time employment. Ms. Gesie in good faith erroneously thought that only her lost wages from the part-time employment and only her earned wages from the part-time employment were relevant to her unemployment insurance claim. Ms. Gesie conferred with her supervisor at the credit union and with her coworkers at the part-time employment and proceeded under the erroneous belief that she knew what she was doing.

Ms. Gesie made weekly claims for the period of April 19, 2020 through July 4, 2020. For each of the first four weeks of the claim, Ms. Gesie reported that she had zero wages, based on the fact that she had zero wages from the part-time employment. Ms. Gesie erroneously omitted the full-time wages from Veridian Credit Union. When the part-time employer recalled Ms. Gesie to work under a reduced operations basis, Ms. Gesie commenced reporting her wages from the part-time employment, but erroneously omitted the full-time wages from Veridian Credit Union. Ms. Gesie in good faith and erroneously certified the accuracy of each weekly claim prior to submitting the weekly claim. Based on the erroneous weekly claims, Iowa Workforce Development disbursed \$4,189.00 in regular benefits and \$5,400.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits to Ms. Gesie for the period of April 19, 2020 through June 20, 2020.

On or about June 27, 2020, Ms. Gesie participated in a written fact-finding interview concerning whether she was partially unemployed with Veridian Credit Union. Ms. Gesie asked the deputy questions in an attempt to ascertain the basis for the need to provide information pertaining to her full-time employment with Veridian Credit Union. Ms. Gesie in good faith provided honest responses regarding her full-time employment with Veridian Credit Union. Even after Ms. Gesie received the July 13, 2020, reference 02 decision, that denied benefits and that concluded she was not partially unemployed, Ms. Gesie continued to be confused and to ask questions regarding why IWD was focusing on her full-time employment when she was laid off from her part-time employment. As part of the fact-finding interview process, Veridian Credit Union provided information regarding Ms. Gesie's continued full-time employment and her receipt of biweekly wages of \$1,665.48 to \$1,806.00 during the period when she was claiming zero wages and only the wages from the part-time employment.

The Benefits Bureau deputy who conducted the fact-finding interview forwarded the deputy's notes to the Investigations and Recovery Unit. An investigator reviewed that information, reviewed Ms. Gesie's weekly claims, reviewed the quarterly wages reported by Veridian, and reviewed the benefits disbursed to Ms. Gesie. Without interviewing Ms. Gesie to ascertain her thought process and intent, the investigator erroneously attributed to Ms. Gesie an intention to misrepresent and to commit fraud. Ms. Gesie had no such intent.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code 96.3(7)(a) provides:

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.

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.

Iowa Code section 96.16(4)(a) and (b) provides:

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.

Iowa Code section 96.5(13) provides:

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.

The evidence in the record establishes that Ms. Gesie was indeed overpaid \$4,189.00 in regular benefits for the period of April 19, 2020 through June 20, 2020. Ms. Gesie must repay the overpaid benefits. The weight of the evidence does not support the Agency's conclusion, arrived at through an incomplete and flawed investigation, that the overpayment resulted from intentional misrepresentation or an intention to commit fraud. Ignorance is distinct from wrongful intent. The Agency failed to make that distinction in this case. This claimant made all too common unintentional errors in connection with her claim. Neither the 15 percent penalty, nor the 36-month administrative penalty, nor any other penalty associated with fraudulent overpayment of benefits is warranted or applicable to this overpayment situation.

DECISION:

The July 13, 2020, reference 02, decision, is modified in favor of the claimant as follows. The claimant was overpaid \$4,189.00 in regular benefits for the period of April 19, 2020 through June 20, 2020. The claimant must repay the overpaid benefits. The overpayment was not based on intentional misrepresentation or fraud. None of the penalties associated with fraud-based overpayments apply and none shall be imposed.

This matter is remanded to the Investigations & Recovery Unit for entry of a *non*-fraud based overpayment decision regarding the \$5,400.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits the claimant received for the period of April 19, 2020 through June 20, 2020.



James E. Timberland
Administrative Law Judge

September 1, 2020
Decision Dated and Mailed

jet/sam