

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SARAHBELLA E JEFFERSON
Claimant

APPEAL 20A-UI-01302-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

INVESTIGATIONS & RECOVERY

**OC: 02/03/19
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 filed a timely appeal from the February 6, 2020 (reference 06) unemployment insurance decision which concluded the claimant was overpaid unemployment insurance benefits because she failed to accurately report earnings while concurrently filing weekly claims for unemployment insurance benefits. IWD also imposed a 15% administrative penalty due to misrepresentation.

The parties were properly notified of the hearing. A telephone hearing was held on March 5, 2020. The claimant participated in the hearing. Tyler Lysinger, Investigator, participated in the hearing on behalf of Iowa Workforce Development (IWD.) IWD Exhibits One through Fourteen were admitted into evidence. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUES:

Whether IWD correctly determined the claimant was overpaid unemployment insurance benefits and if the overpayment amount was correctly calculated.

Whether IWD properly imposed a penalty based upon the claimant's misrepresentation.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant filed a claim for unemployment insurance benefits with an effective date of February 3, 2019.

When the claim was established, the claimant was directed to read the Unemployment Insurance Handbook (Department Exhibit Ten). 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 (Department Exhibit Ten).

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 Ten).

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. (Department Exhibit Ten).

The handbook also alerts claimants 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 Ten)

In addition, each week the claimant would complete a weekly continued claim, she 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 her weekly continued claim each week, the claimant had to check a box that stated she understood the warning message above and wished to proceed.

IWD conducted an audit and discovered that she received wages from Contitech USA and Reif Oil during the time period of July 20, 2019 through the week ending December 28, 2019, but failed to report the wages. IWD contacted the employers, Contitech USA and Reif Oil, on January 8 and January 15, 2020, to verify the claimant's wages earned. The employers confirmed the claimant performed work for both employers.

A review of the administrative file reflects the claimant did not report the same wages to the employer. Each week, from July 20, 2019 through December 28, 2019, the claimant reported she earned \$0.00 in wages, when she filed her weekly continued claim (Department Exhibit Nine), even though she was performing work.

As a result of the employer's verification of wages, Investigator Tyler Lysinger also contacted the claimant. The claimant was mailed a preliminary audit on January 13, 2020, which stated she may have been overpaid benefits in the amount of \$9,971.00, for failing to report her wages (Department Exhibit Nine). The letter also informed the claimant that an overpayment may result in consequences including a 15% penalty (Department Exhibit Nine).

Mr. Lysinger contacted the claimant on January 30, 2020, in response to the letter. The claimant did not dispute the overpayment amount or provide evidence that the wages reported by the employer were inaccurate. The claimant stated she did not report the wages because at the time she filed her claim she was told by an IWD representative to report her net wages rather than her gross wages and also that her telephone was malfunctioning. However, the claimant failed to report any wages.

The claimant's weekly benefit amount was \$529.00 (Department Exhibit Nine). Because the claimant did not accurately report her wages during this same period, an overpayment of \$9,971.00 was determined by IWD (Department Exhibit Thirteen).

In addition to the overpayment, a 15% penalty was imposed, due to the overpayment arising from the claimant's misrepresentation or intentional omission of wages to collect benefits. On 24 occasions, the claimant responded on her weekly continued claim that she had not performed any work and that she did not earn any wages and received a weekly benefit amount of \$529.00 for each of those weeks (Employer's Exhibit Nine). IWD imposed a 15% penalty of \$1,495.65.

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)a-b, as amended in 2008, provides:

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. The employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. This prohibition against relief of charges shall apply to both contributory and reimbursable employers.

(b) However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment.

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. The employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. This prohibition against relief of charges shall apply to both contributory and reimbursable employers.

(b) However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

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. However, the claimant reported she did not perform any work or earn wages for the period of July 20, 2019 through December 28, 2019, and misrepresented she was unemployed as she filed weekly continued claims for unemployment insurance benefits during the same time (Department Exhibit Nine). 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 \$9,971.00, to which she was not entitled (Department Exhibit Nine). 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 knowing 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 from July 20, 2019 through December 28, 2019, when she filed for unemployment insurance benefits. On 24 separate occasions, the claimant reported she earned \$0.00 in wages but in fact performed work (Department Exhibit Nine). This was blatantly false. 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 of July 20, 2019 through December 28, 2019, 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 February 6, 2020, (reference 06) unemployment insurance decision is affirmed. The claimant was overpaid benefits in the amount of \$9,971.00. IWD correctly imposed the 15% administrative penalty of \$1,495.65 due to the claimant's misrepresentation.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn