

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

MELISSA L MATTHEWS
Claimant

APPEAL 22A-UI-20184-SN-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 03/15/20
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 – Misrepresentation & Fraud
PL 116-136, Sec. 2107 – Federal Pandemic Emergency Unemployment Compensation

STATEMENT OF THE CASE:

On December 29, 2022, the claimant/appellant, Melissa L Matthews, filed an appeal from the December 19, 2022 (reference 02) unemployment insurance decision which concluded the claimant was overpaid unemployment insurance benefits because she failed to accurately report earnings while receiving unemployment insurance benefits. Iowa Workforce Development (IWD) also imposed a 15% administrative penalty due to misrepresentation.

The parties were properly notified of the hearing. A telephone hearing was held on January 24, 2023. The claimant participated. Investigator Debbie Rumbaugh participated on behalf of IWD. IWD Exhibit 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 were admitted into the record. The case was heard jointly with 22A-UI-20183-SN-T, 22A-UI-20185-SN-T, 22A-UI-21086-SN-T, and 22A-UI-20188-SN-T, and 22A-UI-20189-SN-T.

ISSUES:

Was claimant overpaid unemployment insurance benefits?

Were the penalties properly imposed?

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 March 15, 2020. The claimant's weekly benefit amount is \$192.00.

When the claim was established, the claimant agreed to read the Unemployment Insurance Handbook. 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 or gross wages are your earnings before taxes or other payroll deductions are made. Earnings or wages 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 or more over their WBA, they will not receive a benefit payment.

The handbook also provides in part:

Preparing to File a Weekly Claim

Individuals should have the following information available when filing their weekly claim:

- SSN
- PIN
- Total amount of gross wages (before deductions) earned during the week
- Total amount of gross holiday pay, gross vacation and severance, if applicable

To calculate gross earnings, multiply the number of hour worked (Sunday through Saturday) times the rate of pay. Example: 10 hours X \$12.00/hour = \$120.00 in gross earnings

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

When filing a weekly claim, claimant was instructed to enter holiday and vacation pay. (Exhibit 9-1). Claimant was also instructed to report wages by entering "the gross amount rounded to the nearest dollar." (Exhibit 9-5)

Finally, before submitting her weekly claim filing, claimant was required to review the information entered and answer the following question:

The laws impose penalties for false statements. Do you certify the information you have provided is true for the week ending Saturday,

On August 1, 2012, claimant began working for Leo's Italian Restaurant Inc. Leo's Italian Restaurant Inc. paid claimant \$9.50 per hour.

The claimant continued to file weekly continued claims for unemployment insurance benefits and continued to receive benefits. The claimant did not accurately report wages earned because the claimant did not believe her tips were included in her gross pay when she made her weekly claims. The employer's human resources officer instructed the claimant to not report her tips when making her claim.

On October 14, 2022, IWD contacted Leo's Italian Restaurant to verify the claimant's wages earned during the period in question. The employer's president, Michael Leo, answered the request for wage records personally.

On December 8, 2022, the claimant was mailed a preliminary audit which stated she may have been overpaid benefits in the amount of \$11,113.00, for failing to accurately report wages (Exhibit 1). The letter also informed claimant that an overpayment may result in consequences including a 15% penalty (Exhibit 1). The notice said the claimant would be interviewed on December 16, 2022. Ms. Rumbaugh also sent this notice by email. Iowa Workforce Development Department provided a copy of the email. (Exhibit 3)

At 9:00 a.m. on December 16, 2022, Investigator Debbie Rumbaugh also contacted the claimant. The claimant said she did get the audit packet in the mail, but she had not opened it yet. Ms. Rumbaugh said she would have to decide based on the information she had and said the decision would be made on the following day. (Exhibit 2-13) The claimant said she was not interested in conducting an interview.

On December 19, 2022, Ms. Rumbaugh issued a decision.

Because the claimant did not accurately report her wages, an overpayment of \$201.00 was determined by IWD. The agency established the overpayment based upon the following incorrect payments made to the claimant:

WEEK ENDING	WAGES REPORTED	WAGES EARNED	BENEFITS PAID	BENEFITS ENTITLED	OVERPAYMENT
02/13/21	\$166.00	\$259.00	\$74.00	\$0.00	\$74.00
02/20/21	\$192.00	\$259.00	\$48.00	\$0.00	\$48.00
02/27/21	\$202.00	\$348.00	\$38.00	\$0.00	\$38.00
03/06/21	\$199.00	\$342.00	\$41.00	\$0.00	\$41.00
			SUBTOTAL:		\$201.00 (OP)
			15% Penalty	\$30.15	\$30.15
			TOTAL		\$231.15

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes IWD did correctly establish and calculate the claimant's overpayment of benefits. The administrative law judge further finds the 15% penalty was inappropriately imposed.

The first issue is whether the claimant has been overpaid benefits.

Iowa Code § 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Code § 96.19(38) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

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 his own common sense and experience, the administrative law judge finds the employer's description of the claimant's earnings more credible.

The administrative law judge adopts the calculations from the employer's response to the wage audit as accurate. While it is true the claimant gave different values for the hours worked for 14 weeks, this information does not have her tip information, so it would have little weight anyway. Additionally, the administrative law judge finds the employer's response to the wage audit as more credible because of the orderly presentation of this information. The claimant's alternative source for this information is not on any document provided to the agency.

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.

After adopting the employer's responses to the wage audit, the administrative law judge concludes the claimant has been overpaid \$201.00.

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

All Ms. Rumbaugh had to impose the penalty on the date of decision was a supposed pattern in the claimant’s wage reporting. At the time of the hearing, Ms. Rumbaugh had not even substantively spoken to the claimant about why there might be a discrepancy between what she reported and her employer.

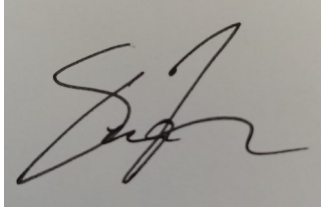
On December 16, 2022, Ms. Rumbaugh contacted the claimant. The claimant understandably reacted poorly to being informed that she owed Iowa Workforce Development thousands of dollars and was being accuse of fraud. The fury is even more understandable given that the agency informed the claimant she needed to have her responses for that call or none of her information would be provided. The upshot of this is that the decision Ms. Rumbaugh has nothing other than the difference in reported wages to make a finding regarding whether the claimant intentionally misreported her wages. Despite the fact that the claimant reported nearly the same earnings for much of the history prior to her receipt of tips, the agency decided to impose a fraud finding for each week claimed.

This left the administrative law judge and the agency at the hearing receiving the claimant’s rationale for reporting differently for the first time. Notably, the claimant said that the employer instructed her not to report her tip income. If the investigation had attempted to gain insight into the claimant’s intent prior to issuing its decision, there may have been opportunity to contact the employer and determine if this was true. There was not anything to support a fraud finding for the decision below.

The administrative law judge finds the claimant’s allegation credible enough that the agency must provide something of substance to undermine the notion that she allegedly relied on this advice from her employer. Iowa Workforce Development has not met its burden to show the claimant’s omission of tip wages was due to an intent to receive benefits she knew she was not eligible for. The administrative law judge finds the agency has failed to meet its burden regarding its fraud finding.

DECISION:

The December 19, 2022 (reference 02) unemployment insurance decision is MODIFIED IN FAVOR OF THE APPELLANT. The claimant was overpaid \$201.00 in regular unemployment insurance benefits. IWD incorrectly imposed the administrative penalty due to the claimant's misrepresentation. Therefore, no penalty should be assessed to the overpayment.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is shown on a light gray background.

Sean M. Nelson
Administrative Law Judge II
Iowa Department of Inspections & Appeals
Administrative Hearings Division – UI Appeals Bureau

February 3, 2023
Decision Dated and Mailed

smn/scn

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 adquiriera 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.