

IOWA DEPARTMENT OF INSPECTIONS & APPEALS
Division of Administrative Hearings
Wallace State Office Building – Third Floor
Des Moines, Iowa 50319-8082

Appeal Number: 16IWDUI114
OC: 04/19/15
Claimant: Appellant (12)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

ANTHONY HOOYMAN
1007 – 3rd AVENUE
MARION, IA 52302-4402

KIRSTEN CZAPLA, IWD INVESTIGATOR
JONI BENSON, IWD
JODI DOUGLAS, IWD
NICHOLAS OLIVENCIA, IWD
EMILY CHAFA, UI APPEALS MANAGER

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor Lucas Building, Des Moines, Iowa 50319.**

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.

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.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to the Department. 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. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

Charles B. Tarvin, Administrative Law Judge

May 24, 2016

(Dated and Mailed)

Iowa Code section 96.3-7 – Correctness of Amount Claimed as Overpayment of Benefits
Iowa Code section 96.5-8 – Administrative penalty
Iowa Code section 96.16-4 – Misrepresentation

STATEMENT OF THE CASE

On February 25, 2016, Iowa Workforce Development (IWD) issued a decision (12) that Anthony Hooyman, claimant and appellant, received a net overpayment (\$6,680.00) of unemployment benefits (UIB) from April 19, 2015 to September 26, 2015 because of incorrectly reporting wages earned with employer WS. It assessed an additional administrative penalty for misrepresentation. On March 7, 2016, Hooyman filed the appeal.

On April 5, 2016, IWD transmitted the case to the Iowa Department of Inspections and Appeals (DIA) to schedule a contested case hearing. When IWD transmitted the case, it mailed a copy of the administrative file to Hooyman.

On April 28, 2016, Administrative Law Judge Charles B. Tarvin convened the hearing. Hooyman participated in the hearing. Kirsten Czapl, IWD investigator, participated in the hearing. The judge admitted the IWD decision, appeal with newspaper article attached, decision overpayment worksheet, audit for reported wages, employer recheck of wage records, preliminary audit notice, pay stubs, and IWD exhibits A-1 – C-1 into the record.

ISSUES

1. Whether IWD correctly established a claim for an overpayment of UIB.
2. Whether IWD correctly determined that the overpayment was the result of misrepresentation.

FINDINGS OF FACT

On April 19, 2015, Hooyman filed a claim for UIB.

When Hooyman filed the claim, he elected to view the *Unemployment Insurance Claimant Handbook 2014 (Handbook)* online. In the *Handbook*, the claimant is informed that to be eligible for UI benefits, the claimant must report all wages (whether holiday, vacation, severance, part-time or any other form of payment) when they are earned, not when payment is received. (p. 5) Gross earnings (before tax and payroll deductions) must be reported on the weekly continued claim during the week a claimant earns them. (p. 7) (exhibit C)

Hooyman did view the *Handbook* online. (testimony of Hooyman)

When Hooyman filed each of the weekly continued claims at issue, he was asked to enter the gross amount of wages earned. He certified, subject to penalties for false statements, that the information he provided was true for each week. (exhibit D)

For the weeks ending on the following dates, Hooyman reported receiving the following gross earnings from employer WS, when in fact he actually received the following gross earnings (GE) from employer WS:

<u>week ending</u>	<u>reported GE</u>	<u>actual GE</u>
Apr 25, 15	\$100.00	\$775.00
May 02, 15	\$100.00	\$486.00
May 09, 15	\$100.00	\$486.00
May 16, 15	\$210.00	\$583.00
May 23, 15	\$300.00	\$583.00
May 30, 15	\$185.00	\$657.00
Jun 06, 15	\$250.00	\$657.00
Jun 13, 15	\$ 70.00	\$355.00

Jun 27, 15	\$180.00	\$467.00
Jul 04, 15	\$ 70.00	\$467.00
Jul 11, 15	\$125.00	\$612.00
Jul 18, 15	\$180.00	\$612.00
Jul 25, 15	\$150.00	\$484.00
Aug 01, 15	\$250.00	\$484.00
Aug 08, 15	\$ 75.00	\$286.00
Aug 15, 15	\$ 75.00	\$286.00
Aug 22, 15	\$145.00	\$567.00
Aug 29, 15	\$250.00	\$567.00
Sep 05, 15	\$290.00	\$467.00
Sep 12, 15	\$190.00	\$467.00
Sep 19, 15	\$200.00	\$420.00
Sep 26, 15	\$100.00	\$420.00
Oct 03, 15	\$350.00	\$160.00

For the weeks ending on the following dates, Hooyman received the following UIB and received the following overpayments/(underpayment) of UIB:

<u>week ending</u>	<u>UIB received</u>	<u>UIB overpayment</u>
Apr 25, 15	\$416.00	\$ 416.00
May 02, 15	\$416.00	\$ 416.00
May 09, 15	\$416.00	\$ 416.00
May 16, 15	\$310.00	\$ 310.00
May 23, 15	\$220.00	\$ 220.00
May 30, 15	\$335.00	\$ 335.00
Jun 06, 15	\$270.00	\$ 270.00
Jun 13, 15	\$416.00	\$ 251.00
Jun 27, 15	\$340.00	\$ 340.00
Jul 04, 15	\$416.00	\$ 416.00
Jul 11, 15	\$395.00	\$ 395.00
Jul 18, 15	\$340.00	\$ 340.00
Jul 25, 15	\$370.00	\$ 370.00
Aug 01, 15	\$270.00	\$ 270.00
Aug 08, 15	\$416.00	\$ 182.00
Aug 15, 15	\$416.00	\$ 182.00
Aug 22, 15	\$375.00	\$ 375.00
Aug 29, 15	\$270.00	\$ 270.00
Sep 05, 15	\$230.00	\$ 230.00
Sep 12, 15	\$330.00	\$ 330.00
Sep 19, 15	\$320.00	\$ 220.00
Sep 26, 15	\$416.00	\$ 316.00
Oct 03, 15	\$170.00	(\$ 190.00)
		\$6,680.00

On January 29, 2016, IWD issued a preliminary audit notice to Hooyman

informing him that an audit of his UIB claim indicated that Hooyman may have received benefits (\$6,680) to which Hooyman was not entitled due to incorrectly reporting his gross earnings with employer WS. If Hooyman did not agree or had questions, then he was encouraged to contact Czapla, an IWD investigator, by February 11, 2016.

On February 11, 2016, Hooyman emailed Czapla and stated that he wished to appeal IWD's decision. On February 12, 2016, Czapla replied that it was premature for Hooyman to appeal because the audit process was not completed. Czapla extended the deadline for Hooyman to dispute the preliminary audit to February 19, 2016.

As of February 22, 2016, Hooyman did not further dispute the preliminary audit. (exhibit A)

On February 25, 2016, Iowa Workforce Development (IWD) issued a decision (03) that Hooyman received a net overpayment (\$6,680.00) of UIB from April 19, 2015 to September 26, 2015 because of incorrectly reporting wages earned with employer WS. (exhibit F)

On March 7, 2016, Hooyman filed the appeal and suggested that during the period (April 19, 2015 – October 3, 2015) at issue, he reported his "take home income." (exhibit G)

CONCLUSIONS OF LAW

Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and the worker's family. See Iowa Code section 96.2.

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. See Iowa Code section 96.3(7)"a".

An individual who is partially unemployed may receive unemployment insurance benefits if the individual is working less than the individual's normal full-time week for an employer and is earning less than the individual's weekly benefit amount plus fifteen dollars. If a claimant earns less than the weekly benefit amount plus \$15, benefits are calculated as follows: weekly benefit amount minus the claimant's wages in the week that exceed 25% of the weekly benefit amount. See 871 Iowa Administrative Code (IAC) section 24.18.

Under Iowa law, if a claimant receives unemployment insurance benefits for which he or she is subsequently determined to be ineligible, IWD must recover those benefits even if the claimant acted in good faith and is not otherwise at fault. IWD may recover the overpayment of benefits by requesting payment from the claimant directly or by deducting the overpayment from any future benefits payable to the overpaid claimant. See 871 IAC section 25.8.

If a claimant is overpaid benefits as a result of misrepresentation [i.e., to give misleading or deceiving information to or omit material information; to present or represent in a manner at odds with the truth See 871 IAC section 25.1] IWD may – in addition to recovering the overpayment through direct payment or deduction from future benefits – file a lien for the overpayment amount in favor of the state on the claimant’s real or personal property and rights to property. See Iowa Code section 96.16(4) and 871 IAC section 25.8(2).

Overpayment

In the case at issue, during the weeks at issue, Hooyman generally underreported gross wages earned from employer WS. IWD correctly determined whether Hooyman received an overpayment of UIB.

For the week ending April 25, 2015, Hooyman received \$775 in wages but only reported receiving \$100. Since his countable wages less \$15 exceeded his UIB, Hooyman received an overpayment of \$416 for the week ending April 25, 2015.

For the week ending May 2, 2015, Hooyman received \$486 in wages but only reported receiving \$100. Since his countable wages less \$15 exceeded his UIB, Hooyman received an overpayment of \$416 for the week ending May 2, 2015.

For the week ending May 9, 2015, Hooyman received \$486 in wages but only reported receiving \$100. Since his countable wages less \$15 exceeded his UIB, Hooyman received an overpayment of \$416 for the week ending May 9, 2015.

For the week ending May 16, 2015, Hooyman received \$583 in wages but only reported receiving \$210. Since his countable wages less \$15 exceeded his UIB, Hooyman received an overpayment of \$310 for the week ending May 16, 2015.

For the week ending May 23, 2015, Hooyman received \$583 in wages but only reported receiving \$300. Since his countable wages less \$15 exceeded his UIB, Hooyman received an overpayment of \$220 for the week ending May 23, 2015.

For the week ending May 30, 2015, Hooyman received \$657 in wages but only reported receiving \$185. Since his countable wages less \$15 exceeded his UIB, Hooyman received an overpayment of \$335 for the week ending May 30, 2015.

For the week ending June 6, 2015, Hooyman received \$657 in wages but only reported receiving \$250. Since his countable wages less \$15 exceeded his UIB, Hooyman received an overpayment of \$270 for the week ending June 6, 2015.

For the week ending June 13, 2015, Hooyman received \$355 in wages but only reported receiving \$70. Subtracting one-quarter (\$104) of his benefits from his wages is \$251. Deducting \$251 from his benefits is \$165. Hooyman was entitled to receive \$165 in UIB and therefore received an overpayment of \$251 for the week ending on June 13, 2015.

For the week ending June 27, 2015, Hooyman received \$467 in wages but only reported receiving \$180. Since his countable wages less \$15 exceeded his UIB, Hooyman received an overpayment of \$340 for the week ending June 27, 2015.

For the week ending July 4, 2015, Hooyman received \$467 in wages but only reported receiving \$70. Since his countable wages less \$15 exceeded his UIB, Hooyman received an overpayment of \$416 for the week ending July 4, 2015.

For the week ending July 11, 2015, Hooyman received \$612 in wages but only reported receiving \$125. Since his countable wages less \$15 exceeded his UIB, Hooyman received an overpayment of \$395 for the week ending July 11, 2015.

For the week ending July 18, 2015, Hooyman received \$612 in wages but only reported receiving \$180. Since his countable wages less \$15 exceeded his UIB, Hooyman received an overpayment of \$340 for the week ending July 18, 2015.

For the week ending July 25, 2015, Hooyman received \$484 in wages but only reported receiving \$150. Since his countable wages less \$15 exceeded his UIB, Hooyman received an overpayment of \$370 for the week ending July 25, 2015.

For the week ending August 1, 2015, Hooyman received \$484 in wages but only reported receiving \$250. Since his countable wages less \$15 exceeded his UIB, Hooyman received an overpayment of \$270 for the week ending August 1, 2015.

For the week ending August 8, 2015, Hooyman received \$286 in wages but only reported receiving \$75. Subtracting one-quarter (\$104) of his benefits from his wages is \$182. Deducting \$182 from his benefits is \$234. Hooyman was entitled to receive \$234 in UIB and therefore received an overpayment of \$182 for the week ending on August 8, 2015.

For the week ending August 15, 2015, Hooyman received \$286 in wages but only reported receiving \$75. Subtracting one-quarter (\$104) of his benefits from his wages is \$182. Deducting \$182 from his benefits is \$234. Hooyman was entitled to receive \$234 in UIB and therefore received an overpayment of \$182 for the week ending on August 15, 2015.

For the week ending August 22, 2015, Hooyman received \$567 in wages but only reported receiving \$145. Since his countable wages less \$15 exceeded his UIB, Hooyman received an overpayment of \$375 for the week ending August 22, 2015.

For the week ending August 29, 2015, Hooyman received \$567 in wages but only reported receiving \$250. Since his countable wages less \$15 exceeded his UIB, Hooyman received an overpayment of \$270 for the week ending August 29, 2015.

For the week ending September 5, 2015, Hooyman received \$467 in wages but only reported receiving \$290. Since his countable wages less \$15 exceeded his UIB, Hooyman received an overpayment of \$230 for the week ending September 5, 2015.

For the week ending September 12, 2015, Hooyman received \$467 in wages but only reported receiving \$190. Since his countable wages less \$15 exceeded his UIB, Hooyman received an overpayment of \$330 for the week ending September 12, 2015.

For the week ending September 19, 2015, Hooyman received \$420 in wages but only reported receiving \$200. Subtracting one-quarter (\$104) of his benefits from his wages is \$316. Deducting \$316 from his benefits is \$100. Hooyman was entitled to receive \$100 in UIB and therefore received an overpayment of \$220 for the week ending on September 19, 2015.

For the week ending September 26, 2015, Hooyman received \$420 in wages but only reported receiving \$100. Subtracting one-quarter (\$104) of his benefits from his wages is \$316. Deducting \$316 from his benefits is \$100. Hooyman was entitled to receive \$100 in UIB and therefore received an overpayment of \$316 for the week ending on September 26, 2015.

For the week ending October 3, 2015, Hooyman received \$160 in wages but reported receiving \$350. Subtracting one-quarter (\$104) of his benefits from his wages is \$56. Deducting \$56 from his benefits is \$360. Hooyman was entitled to receive \$360 in UIB and therefore received an underpayment of \$190 for the week ending on October 3, 2015.

In summary, the action of IWD establishing and requesting repayment of a claim (\$6,680) for a net overpayment of UIB received by Hooyman from April 19, 2015 to September 26, 2015 is AFFIRMED. Iowa Code section 96.3(7)"a".

The judge has no authority to grant Hooyman's request for a 50% reduction in the amount of the overpayment based on equitable grounds.

Misrepresentation

In his appeal, Hooyman stated that when he filed his weekly continued claims, he reported his "take home pay." Through his testimony, Hooyman clarified that by "take home pay", he meant his "take home tips." Although Hooyman also received biweekly pay checks, he did not report his pay checks because his wage rate (i.e., \$4.25/hr.) was low and his pay checks were "\$0" pay checks. While employed by employer WS, Hooyman actively was seeking a higher-paying job. Hooyman suggested that after losing his previous job, he needed both his income from employer WS and his UIB to meet living expenses.

Hooyman admitted that when he initially filed his UIB claim, he read the *Handbook*. In the *Handbook*, Hooyman was informed that he must report all wages (whether holiday, vacation, severance, part-time or any other form of payment) when they are earned.

When Hooyman filed each of the weekly continued claims at issue, he was asked to enter the gross amount of wages earned. Hooyman certified, subject to penalties for false statements, that the information he provided was true for each week.

In summary, IWD, in its audit, reviewed 23 weeks during which Hooyman received UIB. For 22 of the 23 weeks, Hooyman, although he certified to the truthfulness of the information that he provided, underreported his gross wages, often by a substantial amount.

The action of IWD concluding that Hooyman received an overpayment of UIB due to misrepresentation and assessing a 15% penalty is AFFIRMED. Iowa Code section 96.16(4)"b" and 871 IAC section 25.8(2).

DECISION

IWD's decision dated February 25, 2016, reference 12, is AFFIRMED

CBT