

IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
Division of Administrative Hearings
Wallace State Office Building
Des Moines, Iowa 50319

Appeal Number: 14IWDUI207

OC: 6/30/13

Claimant: Appellant (1)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

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 Notice of Appeal, directly to the **Employment Appeal Board, 4TH Floor Lucas Building, Des Moines, Iowa 50319.**

**MICHAEL PATTERSON
101 HAWK RIDGE DR. APT. 1105B
IOWA CITY, IA 52246**

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

**INVESTIGATIONS AND RECOVERY,
IWD
KIRSTEN WOOD, INVESTIGATOR**

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.

JONI BENSON, IWD

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.

(Administrative Law Judge)

October 27, 2014

(Decision Dated & Mailed)

Iowa Code section 96.7-7: Recovery of Overpayment of Benefits
Iowa Code section 96.16-4: Misrepresentation

STATEMENT OF THE CASE

The Appellant, Michael Patterson, filed a timely appeal from a decision issued by Iowa Workforce development ("the Department" or "IWD") dated July 11, 2014, reference 03. In this decision, the Department determined that the Appellant was overpaid \$7,160.00 in unemployment insurance benefits from July 7, 2013 through December 7, 2013. The decision stated that the overpayment resulted from the Appellant's failure to report wages from Convergys Customer Mgmt and Axelon Services Corporation. The decision also notified the Appellant that the overpayment amount must be repaid before any further unemployment payments would be paid to him. Finally, the decision informed the Appellant that a 15% penalty was imposed due to misrepresentation.

The case was transmitted from IWD to the Department of Inspections and Appeals on July 22, 2014 for the scheduling of a contested case hearing. A Notice of Telephone Hearing was issued to all parties on July 23, 2014. An order to continue this matter was issued on August 7, 2014 upon both parties' requests to reschedule the hearing. On October 21, 2014, a telephone appeal hearing was held before Administrative Law Judge Kristine Dreckman. Investigator Kirsten Wood represented the Department and presented testimony. Appellant Michael Patterson appeared and presented testimony. The Department's Exhibits A through C were admitted into the record without objection. The Appellant's Exhibit 1 was also admitted into the record without objection.

ISSUES

1. Whether the Department correctly determined that the Appellant was overpaid unemployment benefits and, if so, whether the overpayment was correctly calculated; and
2. Whether the Department correctly determined the overpayment was a result of misrepresentation.

FINDINGS OF FACT

On July 3, 2013, the Appellant filed an online application for unemployment benefits. He reported a job loss due to layoff, and that his late day of work was July 2, 2013. The Appellant elected to view the Unemployment Benefits Handbook online. He further requested that his benefits be paid through a state issued debit card. The Appellant was required to attend a Re-employment Services (RES) appointment as a condition of receiving his unemployment benefits. The Appellant additionally attended a National Certification Readiness Exam (NCRC) in September 2013. The Appellant was required to show a valid photo ID at both the RES and NCRC appointments. (Wood Testimony; Exhibits B and C).

The Department performed an audit of the Appellant's unemployment claim for the time period of June 30, 2013 through December 28, 2013. During the majority of those weeks spanning that time period, the Appellant's reported earnings were different than the amount that his three different employers, Vangent, Inc., Convergys Customer Management and Axelon Services Corporation, reported that he earned. (Wood Testimony; Exhibit A).

The following chart sets out the amounts claim by the Appellant and reported by his employers, as well as the amount of benefits the Appellant received each week and the amount of benefits the Department believes the Appellant should have received if his wages were correctly reported. (Wood Testimony; Exhibit A).

<i>Week ending</i>	<i>Reported by claimant</i>	<i>Reported by employer</i>	<i>Benefits rec'd</i>	<i>Benefits entitled</i>
07/06/13	0.0	7.00	\$396	\$396
07/13/13	0.0	116.00	\$396	\$379

07/20/13	0.0	116.00	\$396	\$379
07/27/13	0.0	362.00	\$396	\$133
08/03/13	0.0	362.00	\$396	\$133
08/10/13	0.0	363.00	\$396	\$132
08/17/13	0.0	363.00	\$396	\$132
08/24/13	0.0	363.00	\$396	\$132
08/31/13	0.0	363.00	\$396	\$132
09/07/13	0.0	455.00	\$396	\$ 0
09/14/13	0.0	571.00	\$396	\$ 0
09/21/13	0.0	560.00	\$396	\$ 0
09/28/13	0.0	560.00	\$396	\$ 0
10/05/13	0.0	592.00	\$396	\$ 0
10/12/13	0.0	560.00	\$396	\$ 0
10/19/13	0.0	560.00	\$396	\$ 0
10/26/13	0.0	560.00	\$396	\$ 0
11/02/13	0.0	560.00	\$396	\$ 0
11/09/13	0.0	560.00	\$396	\$ 0
11/16/13	0.0	560.00	\$396	\$ 0
11/23/13	0.0	560.00	\$396	\$ 0
11/30/13	0.0	448.00	\$396	\$ 0
12/07/13	0.0	560.00	\$396	\$ 0
12/14/13	0.0	0.00	\$396	\$396
12/21/13	0.0	0.00	\$396	\$396
12/28/13	0.0	0.00	\$396	\$396

Based on the foregoing, the Department determined that the Appellant was overpaid unemployment benefits in the amount of \$7,160.00. (Wood Testimony; Exhibit A).

The Appellant participated in a telephone interview with Investigator Kirsten Wood (Wood) on July 3, 2014. At that time the Appellant acknowledged to Wood that he was employed during the time period at issue. However, he informed Wood that he was a victim of identity theft and did not file any claims for unemployment beyond 2-3 weeks during the time period at issue. He stated that he suspected his Saudi Arabian roommate had discovered his PIN number associated with his unemployment benefits account and continued to claim unemployment. The Appellant further stated that he believed this individual stole his state-issued debit card to collect the falsely-obtained unemployment benefits. According to the Appellant, he attempted to find this former roommate, but discovered the person has since left the country. (Wood Testimony; Exhibit A).

The Department submitted a Department of Transportation (DOT) photo used for the Appellant's current driver's license. The Appellant ultimately acknowledged the DOT photo was of him. (Wood Testimony; Exhibit C; Patterson Testimony).

Further, the Department paid all weekly benefits to the Appellant through a state-issued debit card. The Department submitted that account history for the Appellant's debit card for the month of December, 2013. The debit card was used several times in the month of December, 2013. Almost every withdrawal from the account occurred in the Iowa City/Coralville, Iowa area. On December 7, 2013, the debit card was used to withdraw \$128 from a Bank of the West ATM located at 800 22nd Street, Coralville, Iowa. That withdrawal was captured on video by the bank's surveillance camera, and showed the Appellant withdrawing the funds from the ATM. (Wood Testimony;

Patterson Testimony; Exhibit C).

The Appellant reported the identity theft to the local police department. There, he reported that he had collected unemployment benefits for three weeks, and always received his benefits through a check. (Exhibit 1; Patterson Testimony).

The Appellant testified at hearing that he is a victim of identity theft. He did not dispute that he was employed and received the wages as reflected in the Department's exhibits. However, he maintained that he is a victim of identity theft, and that an unknown individual, most likely a former roommate, has stolen his identity to falsely acquire unemployment benefits issued in his name. The Appellant surmised that this individual was able to intercept his mail to steal his debit card and obtain his social security number. He also believes that this person was able to figure out his PIN associated with his IWD account. Lastly, he accused this unknown individual of falsely obtaining the Appellant's driver's license issued by the DOT. (Patterson Testimony).

REASONING AND CONCLUSIONS OF LAW

Under Iowa law, if an individual receives unemployment insurance benefits for which he or she is subsequently determined to be ineligible, IWD must recover those benefits even if the individual acted in good faith and is not otherwise at fault. IWD may recover the overpayment of benefits by requesting payment from the individual directly or by deducting the overpayment from any future benefits payable to the overpaid claimant.¹

An individual who is partially unemployed may receive unemployment insurance benefits if he is working less than his normal full-time week for an employer and is earning less than his weekly benefit amount plus fifteen dollars.² In order to receive weekly unemployment benefits, individuals must complete a claim each week. The individual is required to report, among other things, whether the individual earned wages or received benefits during the week in question.³

The Appellant does not dispute the amount of overpayment as calculated by the Department. Nor does he dispute that he was not entitled to unemployment benefits during the time period at issue. He maintains he is a victim of identity theft and did not file for or receive the unemployment benefits at issue.

The Appellant is not credible. The Appellant has made several inconsistent statements in connection with this matter. When the undersigned administrative law judge posed questions regarding the inconsistencies in his statements, the Appellant gave nonsensical responses. Most importantly, the Appellant was caught on video withdrawing funds from the state-issued account associated with his unemployment benefits during the time-period at issue. There is overwhelming evidence in this matter that the Appellant claimed and received unemployment benefits to which he was not entitled. Therefore, IWD's decision that the Appellant was overpaid \$71,60.00 in unemployment benefits is correct.

¹ Iowa Code § 96.3(7)(a)

² Iowa Code § 96.19(38)(b)(1)

³ 871 Iowa Administrative Code (IAC) 24.2(1)(g).

Further, IWD may impose a penalty equal to fifteen percent of the amount of a fraudulent overpayment.⁴ The penalty shall be collected in the same manner as the overpayment.⁵ Fraud is defined as “the intentional misuse of facts or truth to obtain or increase unemployment insurance benefits for oneself . . . ; 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 [IWD], shall not act upon it to their, or its, legal injury.”⁶

As previously stated, there is overwhelming evidence in this matter that the Appellant falsely reported his wages for the time period at issue. I conclude that the Appellant’s statements to IWD each week regarding his wages, or lack thereof, were fraudulently made to receive benefits the Appellant was not entitled to receive. Therefore, imposition of fifteen percent penalty is warranted in this matter.

DECISION

IWD’s decision dated July 11, 2014, reference 03 are AFFIRMED. The claimant has been overpaid benefits in the amount of \$7,160. IWD correctly imposed an a 15% penalty for misrepresentation.

kmd

⁴ Iowa Code § 96.16(4)(b).

⁵ *Id.*

⁶ *Id.*