

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

STACY BASTIAN
Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**APPEAL 22A-UI-13772-B2
ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/22/20
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
Iowa Code § 96.5(8) – Misrepresentation & Fraud
Fed Law PL 116-136, Sec. 2107 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the June 3, 2022 (reference 02) Iowa Workforce Development (“IWD”) unemployment insurance decision which concluded the claimant was overpaid PEUC benefits because claimant 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. An in person hearing was held on September 27, 2022. The claimant participated personally. Debbie Rumbaugh, Investigator, participated on behalf of IWD. IWD Exhibits 1-11 were admitted. The administrative law judge took official notice of the claimant’s unemployment insurance benefits records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did IWD correctly determine that the claimant was overpaid PEUC benefits, and was the overpayment amount correctly calculated?

Did IWD properly impose a penalty based upon the claimant’s misrepresentation?

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 22, 2020.

When the claim was established Bastian, the claimant was directed 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/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

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.

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

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 3100 Grand during the time period of March 22, 2020 through March 21, 2021, but failed to report the wages. IWD contacted the employer in May of 2022 to verify the claimant's wages earned with employer, 3100 Grand. The employer confirmed the claimant performed work throughout the time claimant was filing for unemployment benefits. (It is noted that employer's representative that responded to IWD's inquiries was claimant. Claimant filled out the documents indicating that claimant worked and earned wages throughout the entire time that she was filing for unemployment benefits.)

A review of the administrative file reflects the claimant did not report the same wages at the employer when claimant filed her weekly claims. Each week, from March 28, 2020, through March 20, 2021, the claimant reported she earned \$0.00 in wages, when she filed her weekly continuing claim, even though she was performing work with 3100 Grand.

As a result of the employer's verification of wages, Rumbaugh also contacted the claimant. The claimant was mailed a preliminary audit on May 25, 2022, which stated she may have been overpaid PEUC benefits in the amount of \$3,078.00, for failing to report her wages. The letter also informed her that an overpayment may result in consequences including a 15% penalty

Bastian contacted Rumbaugh on June 1, 2022 in response to the letter. The claimant stated she did not report the wages because it was her belief that she was only filing against Flying Mango as that was the job that she lost as a result of its shutting down for Covid. .

Claimant's weekly benefit amount was \$114.00. Because the claimant did not accurately report her wages during this same period, an overpayment of PEUC benefits of \$3,078.00 was determined by IWD. The agency established the overpayment based upon the following incorrect payments made to the claimant:

For each of the weeks when claimant filed a weekly claim, claimant reported \$0.00 in earnings. In each of the weeks claimant filed for benefits, claimant earned from 3100 Grand at least \$129.00 in weekly earnings.

As claimant reported no earnings, she received \$114.00 in state unemployment benefits for 27 weeks from September 13, 2020 through March 20, 2020 for a total amount of \$3,078.00.

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 27 occasions, the claimant responded to her weekly continued claim that she had not performed any work and that she did not earn any wages. The claimant does not dispute the overpayment amount but argued that a penalty should not be imposed because she honestly believed when filing the claim that the 'all wages' statement in the weekly report was only referring to all wages from the job she was filing against.

Claimant had never filed for unemployment previous to filing during this period.

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, but did not correctly impose a 15% penalty due to the claimant's misrepresentation.

PL 116-136 Sec 2107 provides in pertinent part:

PANDEMIC EMERGENCY UNEMPLOYMENT COMPENSATION.

(e) FRAUD AND OVERPAYMENTS.— (1) IN GENERAL.—If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received an amount of pandemic emergency unemployment compensation under this section to which such individual was not entitled, such individual— (A) shall be ineligible for further pandemic

emergency unemployment compensation under this section in accordance with the provisions of the applicable State unemployment compensation law relating to fraud in connection with a claim for unemployment compensation; and (B) shall be subject to prosecution under section 1001 of title 18, United States Code. (2) REPAYMENT.—In the case of individuals who have received amounts of pandemic emergency unemployment compensation under this section to which they were not entitled, the State shall require such individuals to repay the amounts of such pandemic emergency unemployment compensation to the State agency, except that the State agency may waive such repayment if it determines that— (A) the payment of such pandemic emergency unemployment compensation was without fault on the part of any such individual; and (B) such repayment would be contrary to equity and good conscience.

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.

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. 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 PEUC benefits in the amount of \$3,078.00, to which she was not entitled. 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.

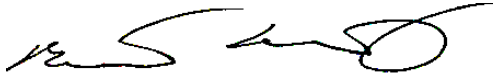
"Fraud" means the intentional misuse of facts or truth to obtain or increase unemployment insurance benefits for oneself or another or to avoid the verification and payment of employment security taxes; a false representation of a matter of fact, whether by statement or by conduct, by false or misleading 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 did not knowingly omit material information to IWD when she failed to correctly report her wages earned from 3100 Grand when she filed for unemployment insurance benefits. On 27 separate occasions, the claimant reported she earned \$0.00 in wages but in fact performed work. This was blatantly false. But, it is a step too far, and a step in logic that this administrative law judge cannot take to say that a repeated error equals a knowing or intentional error. The IWD representative did not show that claimant's actions were knowing. Instead, through Rumbaugh's interview with claimant, Bastian indicated just how unintentional her actions were. She repeatedly stated that she did not mean to do this.

Therefore, the administrative law judge concludes the penalty should not have been added to the calculated overpayment as the claimant did not knowingly omit material information to IWD when she failed to correctly report wages earned for the period of September 13, 2020 through March 20, 2021 and concurrently filed for unemployment insurance benefits. Accordingly, the administrative law judge concludes the overpayment was correctly calculated, but that the application of a 15% penalty due to misrepresentation was not warranted.

DECISION:

The June 3, 2022 (reference 02) unemployment insurance decision is modified in favor of the claimant. The claimant was overpaid benefits in the amount of \$3,078.00. IWD incorrectly imposed the administrative penalty in this matter and said penalty shall be removed.



Blair Bennett | Administrative Law Judge II
Iowa Department of Inspections & Appeals

October 11, 2022
Decision Dated and Mailed

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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. *There is no filing fee to file an appeal with the Employment Appeal Board.*

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 file a petition for judicial review in district court.

2. If you do not file 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 www.iowacourts.gov/efile. *There may be a filing fee to file the petition in District Court.*

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. *No hay tarifa de presentación para presentar una apelación ante la Junta de Apelación de Empleo.*

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 no presenta una apelación de la decisión del juez ante la Junta de Apelación de Empleo dentro de los quince (15) días, la decisión se convierte en una acción final de la agencia y tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días. Puede encontrar información adicional sobre cómo presentar una petición en www.iowacourts.gov/efile. *Puede haber una tarifa de presentación para presentar la petición en el Tribunal de Distrito.*

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.