

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHAEL HARRIS
Claimant

APPEAL 21A-DUA-00821-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 03/29/20
Claimant: Appellant (4)

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Code § 96.5(8) – Administrative Penalty
Iowa Code § 96.16(4) – Offenses, Misrepresentation

STATEMENT OF THE CASE:

On January 27, 2021, Michael Harris (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated January 19, 2021 (reference 04) that determined claimant was overpaid Lost Wages Assistance payments (LWA) in the total amount of \$1,800.00 for the 6 weeks ending September 5, 2020.

After due and proper notice was issued, a telephone hearing was held on Thursday, April 1, 2021. The claimant, Michael Harris, participated personally. Attorney Stuart L. Higgins represented the claimant. Iowa Workforce Development participated through witness Daniel Noonan, Investigator II; and attorney David J. Steen represented the Department.

Appeal Numbers 21A-DUA-00779-LJ-T, 21A-DUA-00819-LJ-T, 21A-DUA-00820-LJ-T, and 21A-DUA-00821-LJ-T were all heard together and created one comprehensive hearing record. At the outset of the hearing, the administrative law judge dismissed the issue of whether the appeal was timely filed.

Claimant's Exhibits 1 and 2 and Department's Exhibits 1-1 through 8-1 were offered and admitted into the record. The administrative law judge took official notice of the administrative record.

ISSUE:

Has claimant been overpaid Lost Wages Assistance payments?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

On January 19, 2021, Iowa Workforce Development entered a decision (reference 02) finding claimant was overpaid federal Pandemic Unemployment Assistance in the total amount of \$19,000.00 for all weeks between March 22, 2020 and December 19, 2020. That decision was affirmed in Appeal Number 21A-UI-00819-LJ-T.

The claimant received LWA in the amount of \$1,800.00 for the six-week period ending September, 2020. Claimant's initial eligibility for LWA payments occurred when he was found eligible for federal Pandemic Unemployment Assistance between July 26, 2020 and September 5, 2020. That eligibility has now been denied in Appeal Number 21A-UI-00779-LJ-T.

Claimant filed weekly claims each week beginning with the week ending March 28, 2020, and ending with the week ending December 19, 2020. The administrative record shows he failed to report the commissions he earned as he received them from closed real estate transactions. A summary of claimant's weekly claims and the amounts he failed to report is below:

Benefit Week Start	Benefit Week End	Work Status	Amount Reported	Amount Earned
3/22/20	3/28/20	Still Working	\$1.00	\$0.00
3/29/20	4/4/20	Did not work	\$0.00	\$0.00
4/5/20	4/11/20	Did not work	\$0.00	\$3,240.00
4/12/20	4/18/20	Did not work	\$0.00	\$6,669.00
4/19/20	4/25/20	Did not work	\$0.00	\$0.00
4/26/20	5/2/20	Did not work	\$0.00	\$0.00
5/3/20	5/9/20	Still working	\$1.00	\$0.00
5/10/20	5/16/20	Did not work	\$0.00	\$0.00
5/17/20	5/23/20	Still working	\$1.00	\$3,456.00
5/24/20	5/30/20	Did not work	\$0.00	\$0.00
5/31/20	6/6/20	Still working	\$1.00	\$0.00
6/7/20	6/13/20	Still working	\$1.00	\$0.00
6/14/20	6/20/20	Still working	\$1.00	\$0.00
6/21/20	6/27/20	Still working	\$1.00	\$0.00
6/28/20	7/4/20	Still working	\$1.00	\$4,551.75
7/5/20	7/11/20	Still working	\$1.00	\$0.00
7/12/20	7/18/20	Still working	\$1.00	\$914.59
7/19/20	7/25/20	Still working	\$1.00	\$0.00
7/26/20	8/1/20	Still working	\$1.00	\$0.00
8/2/20	8/8/20	Still working	\$1.00	\$0.00
8/9/20	8/15/20	Still working	\$1.00	\$0.00
8/16/20	8/22/20	Still working	\$1.00	\$0.00
8/23/20	8/29/20	Still working	\$1.00	\$0.00
8/30/20	9/5/20	Still working	\$1.00	\$0.00
9/6/20	9/12/20	Still working	\$1.00	\$0.00
9/13/20	9/19/20	Still working	\$1.00	\$11,205.00
9/20/20	9/26/20	Still working	\$1.00	\$0.00
9/27/20	10/3/20	Still working	\$1.00	\$0.00
10/4/20	10/10/20	Still working	\$1.00	\$0.00
10/11/20	10/17/20	Still working	\$1.00	\$0.00
10/18/20	10/24/20	Still working	\$1.00	\$2,997.00
10/25/20	10/31/20	Still working	\$1.00	\$0.00
11/1/20	11/7/20	Did not work	\$0.00	\$0.00
11/8/20	11/14/20	Did not work	\$0.00	\$0.00
11/15/20	11/21/20	Did not work	\$0.00	\$0.00
11/22/20	11/28/20	Did not work	\$0.00	\$0.00
11/29/20	12/5/20	Did not work	\$0.00	\$0.00

12/6/20	12/12/20	Did not work	\$0.00	\$0.00
12/13/20	12/19/20	Did not work	\$0.00	\$0.00
		TOTAL:	\$25.00	\$33,033.34

When claimant initially filed his application for unemployment insurance benefits, he agreed that he read the Unemployment Insurance Claimant Handbook. The system is designed in such a way that claimant could not have completed his application without checking a box indicating he agreed that he read this handbook. The Unemployment Insurance Claimant Handbook reads in relevant part:

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 you have not received the payment.

Investigator II Daniel Noonan conducted an interview with claimant on January 19, 2021, to explore the wage reporting discrepancy. During this interview, claimant admitted that he failed to report his full commissions when filing his weekly continued claims for PUA benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the Iowa Workforce Development decision dated January 19, 2021, (reference 04) that determined claimant was overpaid for Lost Wages Assistance payments (LWA) is modified in favor of claimant/appellant.

On August 8, 2020, President Trump signed the *Memorandum on Authorizing the Other Needs Assistance Program for Major Disaster Declarations Related to Coronavirus Disease 2019*. It provided in pertinent part:

“Sec 4. Assistance Program for Lost Wages.

- (a) For purposes of this memorandum, “State” includes the territories and the District of Columbia, and “Governor” includes the chief executive thereof.
- (b) To help meet the needs of the American people during this unprecedented and continuously evolving public health crisis, the Secretary of Homeland Security (Secretary), acting through the FEMA Administrator, is authorized to make available other needs assistance for lost wages, in accordance with section 408(e)(2) of the Stafford Act (42 U.S.C. 5174(e)(2) (“lost wages assistance”), to the people of a State, including the members of any tribe residing therein, if the Governor requests lost wages assistance and agrees to administer delivery and provide adequate oversight of the program, for a major disaster I declared pursuant to section 401 of the Stafford Act (42 U.S.C. 5170) for COVID-19, under the following conditions:
 - (i) the Governor requests from the FEMA Administrator a grant for lost wages assistance pursuant to 42 U.S.C. 5174(f)(1)(A) and agrees to the cost-sharing requirement of 42 U.S.C. 5174(g)(2); and
 - (ii) the Governor administers delivery of financial assistance for lost wages in conjunction with the State’s unemployment insurance system.
- (c) In exercising this authority, the Secretary, acting through the FEMA Administrator, shall, subject to the limitations above, approve a lost wages assistance program that authorizes the Governor to provide a \$400 payment per week, which shall reflect a \$300 Federal contribution, to eligible claimants from the week of unemployment ending August 1, 2020.

- (d) For purposes of this memorandum, the term “Eligible claimants” means claimants who:
- (i) receive, for the week lost wages assistance is sought, at least \$100 per week of any of the following benefits:
 - (A) Unemployment compensation, including Unemployment Compensation for Federal Employees (UCFE) and Unemployment Compensation for Ex-Service members (UCX), under section 8501 of title 5, United States Code;
 - (B) Pandemic Emergency Unemployment Compensation (PEUC), under section 2107 of the CARES Act;
 - (C) Pandemic Unemployment Assistance (PUA), under section 2102 of the CARES Act;
 - (D) Extended Benefits (EB), under section 3304 of title 26, United States Code;
 - (E) Short-Time Compensation (STC), under section 3306(v) of title 26, United States Code;
 - (F) Trade Readjustment Allowance (TRA), under sections 2291 through 2293 of title 19, United States Code; and
 - (G) Payments under the Self-Employment Assistant (SEA) program, under section 3306(t) of title 26, United States Code; and
 - (ii) provide self-certification that the claimant is unemployed or partially unemployed due to disruptions caused by COVID-19.
- (e) The authority vested in the Secretary, acting through the FEMA Administrator, to approve lost wages assistance shall not be construed to encompass authority to approve other forms of assistance.

The state is responsible for refunding to FEMA any unobligated balances that FEMA paid that are not authorized to be retained per 2 C.F.R. 200.343(d) and the state is also responsible for recovering assistance awards from claimants obtained fraudulently. See UIPL No. 27-20 Change 1 dated August 17, 2020 citing 44 C.F.R. 206.120(f)(4 and 5). 44 C.F.R. § 206.16 provides as follows:

- (a) The applicant must agree to repay to FEMA (when funds are provided by FEMA) and/or the State (when funds are provided by the State) from insurance proceeds or recoveries from any other source an amount equivalent to the value of the assistance provided. In no event must the amount repaid to FEMA and/or the State exceed the amount that the applicant recovers from insurance or any other source.
- (b) An applicant must return funds to FEMA and/or the State (when funds are provided by the State) when FEMA and/or the State determines that the assistance was provided erroneously, that the applicant spent the funds inappropriately, or that the applicant obtained the assistance through fraudulent means.

Iowa Code § 96.3(7)a 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.

The decision that denied claimant PUA benefits remains in effect. Because claimant is not eligible for PUA benefits, claimant is also not eligible for LWA benefits. Therefore, claimant has received LWA benefits to which he was not entitled. The administrative law judge concludes that claimant has been overpaid LWA benefits in the total amount of \$1,800.00. Those benefits must be recovered in accordance with Iowa law.

The next issue is whether claimant engaged in fraud or misrepresentation. 42 U.S.C. Section 503(a)(11) provides in pertinent part:

The Secretary of Labor shall make no certification for payment to any State unless he finds that the law of such State, approved by the Secretary of Labor under the Federal Unemployment Tax Act (26 U.S.C.A. § 3301 et seq.) includes provisions for –

(11)(A) At the time the State agency determines an erroneous payment from its unemployment fund was made to an individual due to fraud committed by such individual, the assessment of a penalty on the individual in an amount not less than 15 percent of the amount of the erroneous payment; and

(B) The immediate deposit of all assessments paid pursuant to subparagraph (A) into the unemployment fund of the State.

Iowa Code section 96.16(4)(a) provides:

Offenses

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.

Iowa Admin. Code r. 871- 25.1 provides:

Definitions.

"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.

“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.

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 considering all the testimony offered during the hearing, the administrative law judge finds Noonan’s testimony the most credible. Specifically, the administrative law judge finds that claimant admitted he failed to report his commissions when filing his weekly continued claims for benefits. The unemployment insurance handbook clearly states that all gross wages and gross earnings must be reported on weekly claims. The claimant failed to contact Iowa Workforce Development to inquire whether he needed to report these commissions if he was uncertain. Claimant knowingly omitted material information by failing to report his earnings when he filed his weekly-continued claims for unemployment insurance benefits. This was an intentional concealment of a material fact.

However, after reviewing claimant’s weekly claims, the administrative law judge finds claimant did not intentionally misrepresent his income when filing any weekly continued claims for benefits during weeks when he received LWA payments. Therefore, no 15% penalty will be imposed related to LWA.

DECISION:

The Iowa Workforce Development decision dated January 19, 2021 (reference 04) that determined claimant overpaid Federal Pandemic Unemployment Compensation is modified in favor of claimant/appellant. Claimant has been overpaid six weeks of LWA for a total of \$1,800.00 and that amount must be repaid. Claimant did not intentionally misrepresent his income when filing any weekly continued claims for benefits during weeks when he received LWA payments, and therefore no 15% penalty should be imposed.



Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

April 7, 2021
Decision Dated and Mailed

lj/kmj