

**WAC 192-220-020 When does the department consider me at fault for an overpayment?**

(1) The department will decide if you are at fault for an overpayment based on information provided by you and your employer and from information contained in the department's records. You will be considered at fault:

(a) When the overpayment is the result of fraud, misrepresentation, or willful nondisclosure; or

(b) When all of the following three elements are present:

(i) You were paid benefits in an amount greater than you were entitled to receive and you kept those benefits; and

(ii) You provided incorrect information, did not disclose information which you should have provided, or you caused another person to fail to disclose information; and

(iii) You had notice that the information should have been reported including, but not limited to, written communications from the department such as the unemployment claims kit and directives.

(2) You may be considered at fault, even though you provided the department with all relevant information before a decision was issued, when you should reasonably have known the payment was improper. The following are some, but not all, examples where you should reasonably have known that a payment was improper. These are examples only and do not mean that the department would rule in this manner in every such situation.

(a) You correctly reported earnings but the department paid benefits at the full amount or incorrectly deducted the earnings.

(b) You reported that you were unavailable for one or more customary work days, but the department paid at the full amount and the payment was not a conditional payment.

(c) You received a retroactive pension payment that you had applied for and were reasonably sure would be awarded.

(d) You did not inform the department that you were eligible for benefits on an unexpired claim against another state.

(e) A lower level decision was reversed by the office of administrative hearings, the commissioner, or a court because of new information that you did not disclose to the department.

(f) Other circumstances in which the department finds you knew the payment was improper.

(3) In deciding if you are at fault, the department will also consider your education, mental abilities, emotional state, experience with claiming unemployment benefits, and other personal factors which affect your ability to report all relevant information to the department. This includes any written information provided to you by the department.

(4) You are not at fault when you provided the department with all relevant information before a decision was issued and you would not reasonably have known the payment was improper. The following are some, but not all, examples of instances in which you may not reasonably have known that a payment was improper. These are examples only and do not mean that the department would rule in this manner in every such situation.

(a) The department removed a payment stop in error, resulting in improper payment.

(b) You received a retroactive pension which was backdated by the pension source, not at your request.

(c) A combined wage or federal claim was filed against Washington that should have been filed against another state.

(d) Extended benefits were paid by the department when you would have been eligible for a new claim against Washington or another state.

(e) A lower level decision, in which you had provided all information, was reversed by the office of administrative hearings, the commissioner, or a court.

(f) Other circumstances in which the department finds you did not know the payment was improper.

[Statutory Authority: RCW 50.12.010, 51.12.040, and 50.20.010. WSR 08-21-056, § 192-220-020, filed 10/9/08, effective 11/9/08. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. WSR 05-01-076, § 192-220-020, filed 12/9/04, effective 1/9/05.]