

What to Do if Wrongly Accused of Unemployment Insurance Fraud

UIA's MIDAS Computer System and "Robo-fraud"

In October of 2013 the Michigan Unemployment Insurance Agency started using a new multi-million dollar computer system called MIDAS to administer claims for Unemployment Insurance benefits. There are problems with the MIDAS system that lead to many innocent claimants being charged with fraud by the system. These unjust fraud determinations made by the MIDAS system are at the center of recent news reports and a law suit filed by several claimants and claimant groups.

Here's what seems to be happening with the MIDAS computer system and fraud determinations. When a claimant applies for UI benefits or calls into MARVIN to claim benefits the answers they give to eligibility questions are recorded in the UIA's database. Whenever a claimant applies for or claims benefits their previous employers are notified of the claimant's claim and asked similar questions about the claimant's eligibility for UI. The computer system scans the database, compares claimant and employer answers and if it finds different answers to a question flags the case for **claimant** fraud. The computer then issues a fraud questionnaire to claimants and if it doesn't record a response to the questionnaire within 10 days automatically charges the claimant with fraud. This has been termed "robo-fraud" because fraud is determined by the computer and not a live agent of the Agency.

Different Types of Robo-fraud

Here are the most common reasons the computer may flag a claim for fraud:

- **Reason for Separation:** When you first apply for UI benefits the system asks you to pick a reason you became unemployed as either a (1) layoff for lack of work, (2) voluntary quit or (3) discharge. If the answer you pick differs from the answer picked by the employer the computer is likely to accuse you of fraud. We all know that the reason for someone's separation from employment isn't always clear and some employers aren't the best at communicating when it comes to letting someone go. This lack of clarity that can surround the end of employment makes this type of robo-fraud particularly unjust.
- **Able and Available Reporting.** For each week that you call MARVIN or use the MiWAM system to claim benefits one of the questions the computer asks you is if you are able and available for work. If you answer yes and the computer has some medical information related to your claim (like you were out on medical leave prior to losing your job) then it is likely to accuse you of fraud for misrepresenting your ability to work.
- **Income Reporting Differences (remuneration fraud).** You can receive Unemployment benefits even if you are working part-time as long as your earnings are less than 1.5 times your weekly benefit amount. This is sometimes called "under-employment" benefits. However, you are required to report your part-times earnings every two weeks when you call MARVIN or claim on MiWAM. If the amount of earnings you report does not match the amount of earnings reported by your employer the computer is likely to accuse you of fraud.

Harsh Penalties for Unemployment Insurance Fraud in Michigan

The penalties for Unemployment Insurance fraud in Michigan are very severe and you should not ignore a fraud determination or take it lightly. Penalties can include:

- **Repayment of the benefits** you were overpaid in addition to **1% interest** (really over 12% interest because it is compounded daily).
- **Four times penalty.** You will have to pay back your overpaid benefits in addition to a penalty of four times the amount of your overpayment. This means that if you were overpaid \$5,000 in benefits your penalty will be an additional \$20,000 for a total of \$25,000. This amounts to a 400% penalty, highest by far of any state in the country.
- **Aggressive Collection Practices.** The Agency uses aggressive collection practices to collect what they say you owe, this includes garnishing your tax return, bank account or your wages.

What to Do If You Are Wrongfully Accused of Fraud

- First of all, **don't panic and try not to worry.** Because of this misguided computer system many other innocent

claimants are in the same boat as you. This means that administrative law judges are seeing a lot of baseless fraud charges brought by the Agency and have little tolerance for them. If you can get your case in front of an administrative law judge you have a good chance of getting the fraud charges dismissed.

- **File a Written Protest.** The only way to get your case heard by an administrative law judge is to file a written protest or request to re-open with the Agency. See the sections below on *Your Right to Protest* and *How Do I File a Protest*.
- **Seek Legal Assistance.** After you file your protest seek help from an attorney with experience doing unemployment insurance cases. Our clinic (contact number below) provides free representation for a limited number of cases each year. Beyond that there are a number of private attorneys that will provide representation for a reasonable fee. See our website for a listing of attorneys we know that handle unemployment insurance cases. <http://www.miui.org>

Your Right to Protest or Appeal

- The agency must issue a written notice of their fraud decision. The Agency calls this written notice a **determination**.
- Claimants (and employers) have the right to protest any Unemployment Insurance Agency determination with which they disagree. The written protest must be received within **30 days** after the decision is issued. **30 Days** is the magic number – do not miss that deadline! Determinations are final if they aren't protested within **30 days**.
- Sometimes you don't actually receive a copy of the determination because your address changed after you stopped claiming benefits or some other reason. The first you learn of a fraud charge may be when Agency begins collection actions. In that case you should still file a protest and request re-opening with the Agency. See *Re-opening* below.
- **Re-opening.** If a **30 day** deadline is missed, appeals can be reopened for good cause, but that is hard to do. However, if your 30 days to protest/appeal has passed don't give up. File your protest right away and in your protest also request that your case be re-opened and explain your good cause reason for missing the 30 day deadline. Good cause for re-opening can include things like (1) you didn't receive a copy of the original determination, (2) there was delay or disruption in the delivery of the mail or (3) some other legitimate reason that prevented you from acting sooner.
- When you protest a determination, both the employer and the employee have the opportunity to submit information and documents to support their case. The file is then reexamined by the Agency and a written **redetermination** is issued.
- If you disagree with the redetermination you have the right to appeal it within 30 days. If you appeal the redetermination, the Agency will schedule your case for a **hearing** in front of an impartial Administrative Law Judge. At the hearing the judge hears the testimony and arguments of both sides and makes a decision.

How Do I File a Protest or Appeal?

- Your protest or appeal must be received by the Agency within 30 calendar days of the date the decision being protested or appealed was mailed.
- You can use the form the Agency provides or you can simply write out your protest/appeal in letter format on your own paper. Something like "I am appealing a decision mailed <insert date>." should work. You should sign and date your letter and make sure it includes your social security number and the date of the determination(s) that you are protesting.
- Once you have written out your appeal you should fax (not mail) it to the Agency at: 1-517-636-0427 Be sure to keep a copy of your fax confirmation and the protest/appeal you sent.

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