

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

Appeal Number: 13IWDUI020

OC: 12/02/12

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.**

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.

**ALEM KOZIC
12906 WESTBROOK DRIVE
URBANDALE, IA 50323**

STATE CLEARLY

**IOWA WORKFORCE DEVELOPMENT
INVESTIGATIONS & RECOVERY
430 EAST GRAND AVE.
DES MOINES, IA 50309
IRMA LEWIS**

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.

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.

JONI BENSON, IWD

(Administrative Law Judge)

March 21, 2013

(Decision Dated & Mailed)

STATEMENT OF THE CASE

The Claimant, Alem Kozic, filed a timely appeal from a decision issued by Iowa Workforce Development (IWD) dated December 31, 2012, reference 01. In this decision, IWD stated as follows:

Our records indicate you made false statements concerning your employment and earnings. You did this to receive unemployment insurance benefits from 03/27/11 until 03/10/12. An administrative penalty is imposed which will disqualify you from receiving benefits from 12/23/12 until the end of your benefit year on 11/30/13.

In his appeal, Mr. Kozic wrote that the overpayment was paid in full. Upon receiving Mr. Kozic's appeal, IWD transmitted this case to the Department of Inspections and Appeals on or about January 15, 2013 to schedule a contested case hearing. A Notice of Telephone Hearing was mailed to all parties on January 24, 2013. On March 20, 2013, a telephone appeal hearing was held before Administrative Law Judge Carol J. Greta. Alem Kozic appeared personally and

testified on his own behalf. Investigator Irma Lewis represented IWD and presented testimony. With the transmittal slip, IWD submitted several documents as part of the administrative file. For the sake of clarity, those documents have been marked by the undersigned as the following exhibits:

- Exhibit A Receipt from IWD dated 12/25/12 showing that Mr. Kozic repaid \$994 cash to IWD
- Exhibit B IWD's decision dated December 31, 2012
- Exhibit C Fact-Finding Interview form with Ms. Lewis's notes
- Exhibit D Ms. Lewis's letter to Mr. Kozic of December 17, 2012
- Exhibit E IWD decision dated April 8, 2008, regarding overpayment of \$1050
- Exhibit F IWD decision dated November 2, 2011, regarding overpayment of \$1598
- Exhibit G IWD decision dated September 13, 2012, regarding overpayment of \$1044

ISSUE

The two issues presented here are (1) whether IWD correctly determined that the Claimant is ineligible to receive unemployment insurance benefits and (2) whether IWD correctly imposed an administrative penalty on the basis of false statements made by the Claimant.

FINDINGS OF FACT

Mr. Kozic has been employed by Jordison Construction (also doing business as Liberty Ready Mix, Inc.) since approximately 2008. Employment in the construction business is dependent on the weather and can be subject to temporary layoffs. Mr. Kozic testified that he has been temporarily laid off from time to time by this employer. During those layoffs, he files claims for unemployment insurance benefits. (Kozic Testimony)

On April 8, 2008, IWD notified Mr. Kozic that he had been overpaid \$1050 on his unemployment insurance claim for the three weeks between March 9 and March 29, 2008. The notice from IWD stated that the overpayment resulted from Mr. Kozic incorrectly reporting that he had earned no wages for those three weeks. (Exhibit E)

On November 2, 2011, IWD notified Mr. Kozic that he had been overpaid \$1598 on his unemployment insurance claim for the five weeks between March 27 and April 30, 2011. The notice from IWD stated that the overpayment resulted from Mr. Kozic incorrectly reporting that he had earned no wages for those five weeks. (Exhibit F)

And on September 13, 2012, IWD notified Mr. Kozic that he had been overpaid \$1044 on his unemployment insurance claim for the four weeks between January 29 and March 10, 2012. The notice from IWD stated that the overpayment resulted from Mr. Kozic incorrectly reporting that he had earned no wages for those four weeks. (Exhibit G)

All of the overpayment amounts have been repaid to IWD. The amount from 2008 was repaid through offsets. (Lewis Testimony) The amount from 2011 has been repaid in full, but the

means of repayment were not clarified at hearing. The most recent amount of \$1044 was paid directly by Mr. Kozic by a \$50 check and \$994 cash. (Kozic Testimony)

On December 17, 2012, Ms. Lewis sent a letter to Mr. Kozic, enclosing copies of Exhibits E, F, and G. The letter informed Mr. Kozic of IWD's belief that he gave false information on the claims as stated in Exhibits E, F, and G, and that IWD planned to assess an Administrative Penalty, disqualifying him from "receiving benefits for a specific period of time because false information was given on prior claims for benefits." The letter gave Mr. Kozic until December 27, 2012 to respond as to why he did not correctly report wages from his employer and why "this is repeated behavior." (Exhibit D)

Mr. Kozic did not respond in writing to the letter of December 17. (Exhibit C; Lewis Testimony)

Ms. Lewis testified that Mr. Kozic's claims with IWD were audited in 2008, yet he had nine weeks of false claims in the most recent two years. She also explained that when a claimant submits a wage report online or via telephone, as Mr. Kozic did, he gets a boilerplate warning that the submission of any false information could result in an administrative penalty. Furthermore, both the online and phone reporting systems require a claimant to certify as to the accuracy of any information submitted. When asked if he worked the weeks of March 9, 16, and 23 in 2008, March 27 and April 3, 10, 17, and 24 in 2011, and January 29, February 5, 12, 19, 26, and March 5 in 2012, Mr. Kozic reported "no." (Lewis Testimony)

IWD's position is that Mr. Kozic knowingly filed incorrect information, justifying its imposition of an administrative penalty against him. The penalty is ineligibility for unemployment benefits from December 23, 2012 through November 30, 2013, the end of his benefit year. (Lewis Testimony)

Mr. Kozic admitted that he was overpaid for the weeks in question, and he does not dispute the amounts. He denied knowingly reporting false information. The explanation provided at hearing by Mr. Kozic was that he based most of his wage reports to IWD on his paychecks from his employer, and that if the paychecks were late, he had no wages to report. He also stated that in 2011 he returned to Bosnia to attend to a family matter and reported accurate wages two weeks late. In summary, Mr. Kozic's position is that he reported all of his wages, but acknowledged that some of the wages were reported a few weeks late to IWD. (Kozic Testimony)

Obviously frustrated, Mr. Kozic testified at length about being given different information from different employees of IWD. He apparently was not (or at the very least perceives that he was not) treated with respect by all of the employees at IWD with whom he had contact. (Kozic Testimony)

Mr. Kozic acknowledges having made a mistake. Having repaid the overpayments in full, he does not understand why he should be penalized. When asked why he repeated the mistake from 2008 in both 2011 and 2012, Mr. Kozic denied having received the decision marked Exhibit E. Mr. Kozic also denied having received the decision from 2011 marked Exhibit F. Mr. Kozic has resided at the same address since before 2008, and Ms. Lewis stated that none of the documents mailed to him by IWD were returned by the Postal Service as undeliverable. (Kozic Testimony; Lewis Testimony)

Mr. Kozic's testimony that he did not receive Exhibits E and F when they were originally mailed to him is not credible. His assertion that he was not aware that IWD believed he made false statements in 2008 and 2011 is neither reasonable nor believable. Even if he did not appreciate the significance of the 2008 audit of his claims, he was aware that \$1050 was deducted from his benefits in 2008 and an additional \$1598 was repaid either through offset or directly by Mr. Kozic

to IWD in 2011. It is more likely that Mr. Kozic believed that he would just repay any overpayments when the overpayments were detected. There is no evidence that his false statements were unintentional.

REASONING AND CONCLUSIONS OF LAW

IWD is mandated to impose an administrative penalty when it determines that an individual has, within the 36 preceding calendar months, willfully and knowingly made a false statement or misrepresentation or willfully and knowingly failed to disclose a material fact with the intent to obtain unemployment benefits to which the individual is not entitled. Iowa Code § 96.5(8). The imposition of an administrative penalty results in the forfeiting of all unemployment benefits for a period of time to be determined by the Department but not to exceed the remainder of the individual's benefit year. *Id.*

In this case, the evidence amply supports IWD's conclusion that Mr. Kozic knowingly made false statements with the intent of obtaining unemployment insurance benefits from March 27, 2011 until March 10, 2012 while he was employed with Jordison Construction (also d/b/a Liberty Ready Mix, Inc.). This period of time is within the 36 months of Mr. Kozic's claim for the week of December 2 2012.

After deciding to impose an administrative penalty, IWD's investigator considers the facts and nature of the offense in determining the degree and severity of the penalty. The suggested penalty range for falsification is from three weeks through the remainder of the benefit year. 871—Iowa Administrative Code (IAC) 25.9(2)"b". While an investigator has broad discretion to determine the actual penalty to be imposed within the range, IWD's regulations state, "If the same offense is repeated, loss of benefits through the end of the benefit year will result." 871—IAC 25.9(2).

Ms. Lewis, IWD's investigator, testified at hearing that she imposed the maximum penalty on Mr. Kozic based on the fact that this is repeated behavior. Mr. Kozic submitted false claims in 2008 for which he was audited. He repeated this behavior in 2011 and 2012. His assertion that he was not aware of the 2008 and 2011 overpayments is not credible. Neither is his explanation that he reported that he did not work during the weeks in question based on delayed paychecks. Mr. Kozic knew whether he worked or not. IWD's decisions in 2008 and 2011 (Exhibits E and F) gave him ample notice that his practice of reporting based on delayed paychecks was not in compliance with the law.

Mr. Kozic's argument that he repaid all overpayments is not a defense to the mandate of IWD to impose an administrative penalty. Subsection 8 of Iowa Code § 96.5 specifically provides that a person "shall be disqualified" for false statements and that "[a]ny penalties imposed by this subsection shall be in addition to those otherwise prescribed in this chapter." 871—IAC 25.9(2) "a" states, "Any penalties imposed by this rule shall be in addition to those imposed by Iowa Code section 96.16." Subsection 4 of that statute mandates the recovery of overpayments.

Having determined that Mr. Kozic deliberately submitted false statements to receive benefits, IWD was statutorily obligated to impose an administrative penalty in addition to recovering the overpayment. Discretion is allowed regarding the length of the penalty. The penalty imposed in this case did not exceed the maximum penalty allowed under IWD's regulations; the agency did not abuse its discretion in determining the length of the penalty. IWD's decision, therefore, must be affirmed.

DECISION

Iowa Workforce Development's decision dated December 31, 2012, reference 01, is AFFIRMED. IWD shall take any steps necessary to implement this decision.

cjg