

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

**Appeal Number:** 05-IWDUI-34  
**OC:** 01/02/05  
**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 written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>TH</sup> 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.

**WILLIAM R YEAGER  
1101 WOODLAND DRIVE #22  
KNOXVILLE IA 50138**

STATE CLEARLY

**INVESTIGATIONS AND RECOVERY  
IOWA WORKFORCE DEVELOPMENT  
1000 EAST GRAND AVENUE  
DES MOINES IA 50319-0209**

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.

Dan Anderson, IWD

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(Administrative Law Judge)

February 25, 2005

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(Decision Dated & Mailed)

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Section 96.5-8 - Administrative Penalty  
871 IAC 25.9(2) - Penalties

STATEMENT OF THE CASE:

The claimant filed an appeal from an Iowa Workforce Development Department decision dated February 1, 2005, reference 01, which disqualified the claimant from receiving benefits for a period from January 2, 2005 to August 13, 2005, due to a prior overpayment based on misrepresentation.

The hearing was held pursuant to due notice on February 21, 2005, by telephone conference call. The claimant did not participate. Cindy Stroud, Investigator, participated on behalf of Iowa Workforce Development, Investigations and Recovery.

## FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness, and having considered all of the evidence in the record, finds: The claimant was the subject of an audit and investigation on his claim for benefits effective January 4, 2004. A representative of Iowa Workforce Development issued a decision that the claimant was over paid benefits \$2,644.50 due to misrepresentation on September 16, 2004. The decision was not appealed, and it has now become final.

When the claimant filed his most recent claim effective January 2, 2005, a department representative notified Investigator Stroud. Stroud mailed a warning letter to the claimant dated January 10, 2005 that she was considering a penalty on the current unemployment claim due to the prior overpayment based on misrepresentation.

The claimant called Stroud on January 21 stating he had just received the letter due to an address change. Stroud re-mailed the letter with the documentation supporting the overpayment, and she gave the claimant until January 28 to submit a response. The claimant did not respond.

The department has a policy of imposing a penalty of up to the remainder of a benefit year when an individual incurs an overpayment due to misrepresentation for a period of greater than nine weeks. The claimant's \$2,644.50 overpayment occurred over a period of sixteen weeks. In addition, there is no record of any re-payment of the overpayment. Stroud concluded that a penalty of two-weeks of disqualification for each of the sixteen weeks of overpayment is appropriate in this matter.

The claimant failed to respond to the hearing notice.

## REASONING AND CONCLUSIONS OF LAW:

The issue is whether the administrative penalty imposed is correct.

### **Iowa Code Section 96.5-8 provides:**

8. Administrative Penalty. If the department finds that, with respect to any week of an insured worker's unemployment for which such person claims credit or benefits, such person has, within the thirty-six calendar months immediately preceding such week, with intent to defraud by obtaining benefits not due under this chapter, willfully and knowingly failed to disclose a material fact; such person shall be disqualified for the week in which the department makes such determination, and forfeit all benefit rights under the unemployment compensation law for a period of not more than the remaining benefit period as determined by the department according to the circumstances of each case. Any penalties imposed by this subsection shall be in addition to those otherwise prescribed in this chapter.

### **871 IAC 25.9(2) provides:**

b. The general guide for disqualifications for deliberate falsification for the purpose of obtaining or increasing unemployment insurance benefits is listed below. It is intended to be used as a guide only and is not a substitute for the personal subjective judgment of the investigator because each case must be decided on its own merits. The administrative penalty recommended for falsification ranges from three weeks through the end of the benefit year.

The administrative law judge concludes that the administrative penalty imposed by the department is correct pursuant to Iowa Code Section 96.4-3 and Iowa Code Section 96.5-8. The claimant was the subject of an overpayment decision due to misrepresentation within the time period established by the law, which was not appealed, and it has now become final. The sixteen-week (16) period of disqualification imposed by the department is within the administrative penalty discretion of the law.

Stroud elected to impose a penalty that is less than the department policy given the circumstances in this matter. Instead of disqualifying the claimant for a penalty period extending to the remainder of his benefit year, Stroud imposed a two-week disqualification for each of the sixteen weeks of the misrepresentation overpayment.

**DECISION:**

The decision of Iowa Workforce Development dated February 1, 2005, reference 01, is **AFFIRMED**. The claimant is disqualified from receiving benefits for the 32-week period ending August 13, 2005.

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