

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

Appeal Number: 08-IWDUI-042
OC: 02/10/08
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, 4TH Floor Lucas Building, Des Moines, Iowa 50319.**

WANDA J CARTER
1322 HUTTON STREET
DES MOINES IA 50316-2508

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.

STATE CLEARLY

INVESTIGATION 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

(Administrative Law Judge)

April 11, 2008

(Decision Dated & Mailed)

Section 96.4-3 - Able and Available
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 March 14, 2008, reference 01, which disqualified the claimant from receiving benefits for a period from February 10, 2008 to the remainder of the benefit year ending February 8, 2009, due to a prior overpayment based on misrepresentation.

The hearing was held pursuant to due notice on April 7, 2008, by telephone conference call. The claimant participated. Irma Lewis, Investigator, participated on behalf of Iowa Workforce Development, Investigations and Recovery. Department Exhibit One was received as evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses, and having considered all of the evidence in the record, finds: The claimant was the subject of an audit and investigation on her claim for benefits effective March 6, 2005. A representative of Iowa Workforce Development issued a decision that the claimant was over paid benefits \$2,668.00 due to misrepresentation on December 20, 2005. The decision was not appealed, and it has now become final.

When the claimant filed her most recent claim effective February 10, 2008, a department representative notified Investigator Lewis. Lewis mailed a warning letter to the claimant dated February 19, 2008 advising her that the department was considering a penalty on her current unemployment claim due to her misrepresentation overpayment of \$2,668.00. The claimant faxed a response attributing the first six to eight weeks of the overpayment was due to a belief she was not being paid for a training period, and offering financial hardship as a reason for it with a failure to repay the overpayment.

Lewis took a statement from the claimant who admitted she knew she was not entitled to the \$2,668 benefits she received, and she signed a repayment agreement on December 15, 2005 that she would make monthly payments of \$50 beginning January 2006. The department record shows she made three, fifty dollar payments toward the overpayment. When the claimant discontinued payments, Lewis referred the matter to the Polk County, Iowa attorney for prosecution.

The department policy for an administrative penalty of nine or more weeks of fraud-overpayment is the remainder of the benefit year disqualification. The claimant failed to report any wages for nineteen (19) weeks that caused her \$2,668.00 overpayment. When the claimant filed a 2007 unemployment claim, the department failed to notify Lewis. The department did offset weekly unemployment benefits on the claimant's claim that repaid the outstanding overpayment.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the claimant is able and available for work.

Iowa Code Section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work.

The further 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 remainder of the benefit year disqualification period imposed by the department is within the administrative penalty discretion of the law.

Although the claimant admits her wrongdoing that lead to the nineteen weeks of misrepresentation-overpayment totaling \$2,668, she continues to blame the department and its treatment of her as excuses for minimizing the penalty period. The claimant failed to honor the repayment agreement, and failed to contact the department about any circumstances that would justify a setting aside of the agreement. While the overpayment has been repaid, this circumstance is not sufficient to merit a reduction of the penalty period imposed by the department.

DECISION:

The decision of Iowa Workforce Development dated March 14, 2008, reference 01, is AFFIRMED. The claimant is disqualified from receiving benefits for the remainder of her current benefit year period ending February 8, 2009.

rls