

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

Appeal Number: 12IWDUI535
OC: 09/09/12
Claimant: Appellant (1)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

ERIN BASEL
2751 W AVENUE
WAUKEE, IA 50263

INVESTIGATIONS AND RECOVERY, IWD
IRMA LEWIS, INVESTIGATOR

JOE WALSH, IWD
IRMA LEWIS

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*.

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

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.



(Administrative Law Judge)

January 17, 2013

(Dated and Mailed)

Iowa Code section 96.5-8 – Administrative Penalty
Iowa Code section 96.4-3 – Ineligibility for Benefits

STATEMENT OF THE CASE

Claimant/Appellant Erin Basel filed an appeal from a decision issued by Iowa Workforce Development (“IWD”) dated October 3, 2012, reference 01, finding she was ineligible to receive unemployment insurance benefits because she made false statements concerning her employment and earnings and did so to receive unemployment insurance benefits from December 5, 2010 through July 30, 2011. IWD

imposed an administrative penalty from September 23, 2012, until the end of Basel's benefit year on September 7, 2013.

IWD transmitted the case to the Department of Inspections and Appeals on October 17, 2012 to schedule a contested case hearing. When IWD transmitted the case, it mailed a copy of the administrative file to Basel.

On December 19, 2012 at 2:06 p.m., Administrative Law Judge Charles B. Tarvin convened the hearing. Basel failed to appear. [Note: On December 19, 2012 at approximately 4:00 p.m., Basel connected for the appeal hearing, too late to participate in the hearing.] Irma Lewis appeared and testified on behalf of IWD. The judge admitted Exhibits A1 through E4 into the record.

ISSUES

Whether the Department correctly imposed an administrative penalty on the basis of false statements made by the Claimant.

Whether the Department correctly determined the Claimant is ineligible to receive unemployment insurance benefits.

FINDINGS OF FACT

Basel reported that she was employed by Robert Half, a temporary employment agency, while she was receiving unemployment insurance benefits. For the weeks ending December 11, 2010 through March 12, 2011 (14 weeks), Basel underreported to IWD her wages through Robert Half. For the weeks ending May 14, 2011 June 25, 2011 (7 weeks), Basel failed to report to IWD her wages through Robert Half. For the weeks ending July 2, 2011 and July 16, 2011 (2 weeks), Basel underreported to IWD her wages through Robert Half. For the weeks ending July 9, 2011 and July 23, 2011 through July 30, 2011 (3 weeks), Basel failed to report to IWD her wages through Robert Half.

On October 18, 2011, IWD issued an *Unemployment Insurance Notice to Report* stating that IWD was considering imposing an administrative penalty because she failed correctly to report all earnings through Robert Half and provided false information to IWD. Basel failed to appear for a scheduled interview on November 1, 2011.

On November 2, 2011, IWD issued a decision finding Basel had been overpaid \$6,221.00 between December 5, 2010 and July 30, 2011 because she incorrectly reported her wages earned Robert Half. The decision finding Basel had been overpaid is not the subject of this appeal.

In September 2012, Basel requested additional unemployment insurance benefits. On September 20, 2012, Lewis mailed a letter to Basel giving Basel an opportunity to respond by mail concerning the issue of whether IWD should assess an administrative penalty for failure to report correct wages through Robert Half. Basel failed to submit a written response by the deadline (September 28, 2012).

On October 3, 2012, IWD issued a decision, reference 01, finding Basel was ineligible to receive unemployment insurance benefits because she made false statements concerning her employment and earnings and did so to receive unemployment insurance benefits from December 5, 2010 until July 30, 2011. IWD imposed an administrative penalty from September 23, 2012, until the end of Basel's benefit year on September 7, 2013.

Lewis determined Basel failed to correctly report her earnings for 26 weeks and that an administrative penalty should be imposed. Lewis testified IWD follows a policy of imposing an administrative penalty for the remainder of the benefit year when a claimant fails to correctly report his or her wages for 9 weeks or more.

REASONING AND CONCLUSIONS OF LAW

IWD may impose an administrative penalty if an insured person has, within the preceding 36 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 defraud by obtaining benefits the person is not entitled to.¹ The person is disqualified for the week in which IWD makes the determination and forfeits all benefit rights to unemployment insurance benefits for a period of not more than the remaining benefit period as determined by IWD.² The IWD investigator exercises his or her discretion to determine the degree and severity of the penalty, based on the nature of the offense and facts.³

IWD's rules define intent as "the design, resolve, or determination with which an individual or group of individuals acts in order to reach a preconceived objective."⁴ Fraud is defined as "the intentional misuse of facts or truth to obtain or increase unemployment insurance benefits for oneself . . . ; a false representation of a matter of fact, whether by statement or by conduct, by false or misleading statements or allegations; or by the concealment or failure to disclose that which should have been disclosed, which deceives and is intended to deceive another so that they, or [IWD], shall not act upon it to their, or its, legal injury."⁵

¹ Iowa Code § 96.5(8).

² *Id.* § 96.5(8).

³ 871 IAC 25.9(2)c.

⁴ *Id.* 25.1.

⁵ *Id.*

The governing statute and rules do not define the terms willfully and knowingly.⁶ Therefore, it is necessary to turn to the rules of statutory and regulatory interpretation. The purpose of statutory interpretation is to determine the true intent of the legislature.⁷ When the legislature has not defined the words of a statute, the Iowa Supreme Court looks to prior decisions of the court, similar statutes, dictionary definitions, and common usage.⁸ The rules of statutory interpretation also govern the interpretation of an administrative agency's rules.⁹ The courts construe administrative rules together, using "common sense and sound reason."¹⁰

Black's Law Dictionary defines knowing as "having or showing awareness or understanding" and "deliberate; conscious."¹¹ Willful is defined as "voluntary and intentional, but not necessarily malicious."¹²

Basel did not explain in her notice of appeal why IWD erred in imposing an administrative penalty. Basel failed to appear for the appeal hearing.

Lewis testified that Basel failed to correctly report her wages for 26 weeks while she requested and received weekly unemployment benefits. The information Basel provided to IWD was false. I conclude Basel's statements to IWD each week were willful and false statements knowingly made to receive benefits Basel was not entitled to receive. Imposition of an administrative penalty is appropriate.

Lewis imposed a penalty for the remainder of the benefit year. IWD's rules afford the investigator discretion to determine the degree and severity of the penalty, based on the nature of the offense and facts.¹³ I cannot conclude Lewis' imposition of an administrative penalty from September 23, 2012 through the end of the benefit year on September 7, 2013 was in error. Because IWD correctly imposed an administrative penalty, Basel is also ineligible to receive unemployment insurance benefits from September 23, 2012 through September 7, 2013.¹⁴ IWD's decision should be affirmed.

⁶ Iowa Code section 96.16(5)b defines knowingly for purposes of the subsection as "having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the requirement or prohibition involved."

⁷ *Bob Zimmerman Ford, Inc. v. Midwest Automotive I, L.L.C.*, 679 N.W.2d 606, 609 (Iowa 2004).

⁸ *Id.* at 609 (citing *Bernau v. Iowa Dep't of Transp.*, 580 N.W.2d 757, 761 (Iowa 1998)).

⁹ *Messina v. Iowa Dep't of Job Serv.*, 341 N.W.2d 52, 56 (Iowa 1983).

¹⁰ *Id.*

¹¹ *Black's Law Dictionary* (7th Ed. 1999).

¹² *Id.*

¹³ 871 IAC 25.9(2)c.

¹⁴ Iowa Code § 96.4(3).

DECISION

IWD's decision dated October 3, 2012, reference 01, is AFFIRMED. IWD correctly imposed an administrative penalty disqualifying Basel from receiving unemployment insurance benefits from September 23, 2012 through September 7, 2013.

cbt

