

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

Appeal Number: 15IWDUI124
OC: 02/08/15
Claimant: Appellant (1)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

BRADLEY WEINER
PO BOX 268
VINCENT, IA 50594

INVESTIGATIONS AND RECOVERY, IWD
JANE CONNOR, INVESTIGATOR

JONI BENSON, IWD
NICHOLAS OLIVENCIA, IWD

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)

April 29, 2015

(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 Bradley Weiner filed an appeal from a decision issued by Iowa Workforce Development (“IWD”) dated March 17, 2015, reference 01, finding he was ineligible to receive unemployment insurance benefits because he made false statements concerning his employment and earnings and did so to receive unemployment

insurance benefits from January 13, 2013 until March 16, 2013. IWD imposed an administrative penalty from March 8, 2015 until June 27, 2015.

IWD transmitted the case to the Department of Inspections and Appeals on March 30, 2015 to schedule a contested case hearing. When IWD transmitted the case, it mailed a copy of the administrative file to Weiner. Additional Exhibits were submitted on April 9, 2015 with a copy sent to Weiner.

On April 24, 2015, a contested case hearing was held before Administrative Law Judge Emily Kimes-Schwiesow. Weiner appeared and testified. Jane Connor appeared and testified on behalf of IWD. Exhibits 1 through 12 were admitted into the record.

ISSUES

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

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

FINDINGS OF FACT

IWD conducted an audit and discovered Weiner received wages from Trinity Regional Medical and CJ Bio America Inc. from January 13, 2013 through March 16, 2013 but failed to report the wages. An overpayment of unemployment insurance benefits resulted. Weiner did not appeal the overpayment. Connor requested Weiner respond to an inquiry regarding the overpayment and the potential administrative penalty on his subsequent claim by March 9, 2015. Weiner called on March 4, 2015 and indicated he would respond in writing, but did not do so.

IWD issued a decision on March 17, 2015, reference 01, finding Weiner was ineligible to receive unemployment insurance benefits because he made false statements concerning his employment and earnings and did so to receive unemployment insurance benefits between January 13, 2013 and March 16, 2013. IWD imposed an administrative penalty from March 8, 2015 until June 27, 2015. Weiner appealed the decision.

Weiner confirmed he worked at CJ Bio America Inc. during the time period in question. He was in training at the time, and did not consider it employment even though he was earning wages. Weiner claims his failure to report the wages was a mistake and not intentional.

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

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

Weiner acknowledged he received an overpayment. He reported that he made a mistake and his false statements were not intentional. Weiner's explanation lacks credibility. He indicated he did not consider his training with CJ Bio America to be employment, but he was clearly aware that he was earning wages for his time in training.

¹ Iowa Code § 96.5(8).

² *Id.* § 96.5(8).

³ 871 IAC 25.9(2)c.

⁴ *Id.* 25.1.

⁵ *Id.*

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.*

Connor testified Weiner failed to correctly report his wages for 16 weeks while he requested and received weekly unemployment benefits. Weiner did not appeal the overpayment determination. The information Weiner provided to IWD was false. I conclude Weiner's statements to IWD each week were willful and false statements knowingly made to receive benefits Weiner was not entitled to receive. Imposition of an administrative penalty is appropriate.

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 Connor's imposition of an administrative penalty from March 8, 2015 until June 27, 2015, was in error. IWD's decision should be affirmed.

DECISION

IWD's decision dated March 17, 2015, reference 01, is AFFIRMED. IWD correctly imposed an administrative penalty disqualifying Weiner from receiving unemployment insurance benefits from March 17, 2015 until June 27, 2015 January 13, 2013 until March 16, 2013.

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¹³ 871 IAC 25.9(2)c.