

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

Appeal Number: 04-IWDUI-228
OC: 11/14/04
Claimant: Appellant (4)

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.**

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.

JORGE M BARRON
214 OAK STREET
RINGSTED IA 50578

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

(Administrative Law Judge)

December 30, 2004

(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 December 7, 2004, reference 01, which disqualified the claimant from receiving benefits for a period from December 5, 2004 to January 15, 2005, due to a prior overpayment based on misrepresentation.

The hearing was held pursuant to due notice on December 27, 2004, by telephone conference call. The claimant participated. Larry Finley, 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 December 22, 2002. A representative of Iowa Workforce Development issued a decision that the claimant was over paid benefits \$556.00 due to misrepresentation on January 6, 2004. The decision was not appealed, and it has now become final.

When the claimant filed his most recent claim effective November 14, 2004, a representative of the department notified Investigator Finley. After the claimant was notified, Finley conducted an interview with the claimant on December 6. The claimant told Finley he did not report his wages earned with CDR Systems Corporation for the first two-weeks of his employment.

The department policy is to penalize a claimant anywhere from one to six weeks on a current claim for each week of an overpayment due to misrepresentation. Finley concluded the claimant should be given a midrange penalty of three weeks of disqualification for each of the two-weeks of his overpayment. Finley considered that the claimant had several benefit rights interviews, and he should have known that he needed to report his wages when asked whether he worked for each of the two-weeks at issue.

The department collected the \$556 overpayment by offsetting two-weeks of the claimant's benefit entitlement on his current claim.

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 should be modified to lessen the penalty period by two-weeks 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 6-week period of disqualification imposed by the department is within the administrative penalty discretion of the law.

The claimant should be given some consideration for the two-week offsetting of his current benefit in order to repay the outstanding overpayment. While the claimant did misrepresent his May 2003 claim by failing to report his work and wages, it did occur during the first 2-weeks of his employment. A penalty to two-weeks of disqualification for each week of the overpayment is appropriate.

DECISION:

The decision of Iowa Workforce Development dated December 7, 2004, reference 01, is MODIFIED in favor of the claimant. The claimant is disqualified from receiving benefits for the 4 -week period ending January 1, 2005. The claimant is entitled to receive benefits effective January 2, 2005, provide he is otherwise eligible.

rls