

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

Appeal Number: 14IWDUI068
OC: 01/12/14
Claimant: Appellant (01)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

TODD A. DAVIS
355-12th STREET SW
CEDAR RAPIDS, IA 52404

INVESTIGATIONS AND RECOVERY, IWD
IRMA LEWIS, INVESTIGATOR

JONI BENSON, IWD
IRMA LEWIS
DAVID EKLUND, 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 30, 2014

(Dated and Mailed)

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

STATEMENT OF THE CASE

On January 31, 2014, Iowa Workforce Development (IWD) issued an unemployment insurance (UI) decision letter stating that Todd A. Davis was not eligible to receive unemployment insurance benefits (UIB) from January 26, 2014 to the end of his benefit year (January 10, 2015) because Davis made false statements regarding employment

and earnings in order to receive UIB from November 20, 2011 to December 31, 2011. On February 4, 2014, Davis timely filed the appeal.

On February 17, 2014, IWD transmitted the case to the Department of Inspections and Appeals to schedule a contested case hearing. When IWD transmitted the case, it mailed a copy of the administrative file to Davis.

On April 1, 2014, Administrative Law Judge Charles B. Tarvin convened the hearing. Davis participated in the hearing. David Eklund appeared and testified on behalf of IWD. The judge admitted documents including the UI decision letter, appeal letter, UI decision letters [Feb 08, 10 (04), (05)], UI decision letter [May 18, 12 (03)], and exhibits A-1 – E-2 into the record.

ISSUES

1. Whether the Department correctly determined Davis was ineligible to receive unemployment insurance benefits (UIB).
2. Whether the Department correctly imposed an administrative penalty on the basis of false statements made by Davis.

FINDINGS OF FACT

Davis seasonally was employed by employer TK. (testimony of Davis)

On January 11, 2009, Davis filed a UIB claim. IWD approved Davis for UIB. For the two weeks between December 28, 2008 and January 10, 2009, Davis received an overpayment (\$210) of UIB because he incorrectly reported wages with employer TK. For the five weeks between January 18, 2009 and April 4, 2009, Davis received an overpayment (\$837) of UIB because he failed to report or incorrectly reported wages with employer TK. (Feb 08, 10 UI decision letters (04, 05), exhibit C-8 – C-11)

On January 9, 2011, Davis filed a UIB claim. IWD approved Davis for UIB. Effective January 5, 2012, employer TK placed Davis on administrative suspension for violation of company rules. On February 10, 2012, IWD issued a UI decision (02) stating that Davis was not eligible to receive UIB because Davis violated company rules. (exhibit A-3)

On January 15, 2012, Davis filed a UIB claim. IWD approved Davis for UIB. For the five weeks between November 20, 2011 and December 31, 2011, Davis received an overpayment (\$1,258) of UIB because he failed to report or incorrectly reported wages with employer TK. (May 18, 12 UI decision letter (03), exhibit C-4, C-6 – C-7)

On January 12, 2014, Davis filed a UIB claim. On January 17, 2014, IWD issued a letter to Davis stating that because Davis failed to report correct work and wages earned with employer TK in 2011, IWD may impose an administrative penalty against Davis. Davis

submitted a note stating that he overdrew UIB because he was behind on his bills and purchased Christmas presents for the kids. (exhibit C-2 - C-3)

On January 31, 2014, IWD issued a UI decision letter stating that Davis was not eligible to receive UIB from January 26, 2014 to the end of his benefit year (January 10, 2015) because Davis made false statements regarding employment and earnings in order to receive UIB from November 20, 2011 to December 31, 2011. (Jan 31, 14 IU decision letter, exhibit C-1)

In his appeal letter, Davis alleged that IWD denied him UIB for the benefit year 2012 because from November 2011 to December 2011, Davis received an overpayment of UIB. Davis suggested that he should not be penalized twice for the same violation. (appeal letter)

CONCLUSIONS OF LAW

Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and the worker's family. See Iowa Code section 96.2.

If the department finds that an individual has been discharged for misconduct in connection with the individual's employment, then the individual may be disqualified for UIB. See Iowa Code section 96.5(2).

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 any benefits not due under this chapter, willfully and knowingly made a false statement or misrepresentation, or 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. See Iowa Code section 96.5(8).

A notice of a determination that the claimant received UIB to which the claimant was not entitled shall be promptly given to the affected claimant. Such notice shall be dated and shall advise the claimant as to the benefit weeks involved and shall advise the claimant as to the reason for overpayment and the total amount of said overpayment. Unless the claimant, within ten days after such notification was mailed to the claimant's last-known address, files with the department a written request for review of, or an appeal from, such determination, the determination shall be final. Timeliness shall be determined by postmark within ten calendar days from the date of mailing shown on the

decision or be received by the department within ten calendar days from the date of mailing. See 871 IAC section 25.7(2).

When, subsequent to the filing of a valid claim, it has been determined that within the preceding 36 calendar months the claimant failed to report wages earned during a week, such claimant shall forfeit all unemployment insurance benefits for the week in which the determination is made and for a period of not more than such claimant's remaining benefit year. See 871 IAC section 25.9(1).

The administrative penalty recommended for falsification ranges from three weeks through the end of the benefit year. The degree and severity of penalty shall be determined at the discretion of the investigator and shall be based upon the nature of the offense and the facts. See 871 IAC section 25.9(2).

In the case at issue, on February 10, 2012, IWD denied UIB to Davis because on January 5, 2012, employer TK placed Davis on administrative suspension for violation of company rules. See Iowa Code section 96.5(2).

On January 31, 2014, IWD issued a UI decision letter stating that Davis was not eligible to receive UIB from January 26, 2014 to the end of his benefit year (January 10, 2015) because Davis made false statements regarding employment and earnings in order to receive UIB from November 20, 2011 to December 31, 2011. See Iowa Code section 96.5(8).

IWD correctly asserted that the denial of Davis' UIB in 2012 was for a separate violation (i.e., employee misconduct) and unrelated to the denial of Davis' UIB in 2014. In 2014, IWD was not barred from imposing an administrative penalty for a separate violation (i.e., false statements). IWD had discretion in choosing whether or not to impose periods of ineligibility for separate violations concurrently.

On January 12, 2014, Davis filed a claim for UIB. Within 36 calendar months (i.e., November 20, 2011 and December 31, 2011) of filing the claim, Davis received an overpayment (\$1,258) of UIB by willfully and knowingly making a false statement or misrepresentation, or willfully and knowingly failing to disclose a material fact regarding employment and earnings for employer TK.

On two previous occasions, Davis received overpayments of UIB by willfully and knowingly making a false statement or misrepresentation, or willfully and knowingly failing to disclose a material fact regarding employment and earnings for employer TK. IWD exercised reasonable discretion in imposing an administrative penalty, through the remainder of the current benefits year, for Davis' repeated false statements of employment or wages (2009 – 7 months; 2011 – 5 months). 871 IAC section 25.9(2).

The actions of IWD determining that Davis was ineligible to receive UIB and imposing an administrative penalty from January 26, 2014 to January 10, 2015 are AFFIRMED. Iowa Code section 96.5(8); 871 IAC section 25.9(1).

DECISION

The actions of IWD are AFFIRMED. IWD correctly imposed an administrative penalty disqualifying Davis from receiving unemployment insurance benefits from September 26, 2014 through January 10, 2015.

CBT