

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

Appeal Number: 09-IWDUI-065
OC: 03/08/09
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.**

DONALD L BIEGLER
2512 PERRY PARK AVENUE APT #208
PERRY IA 50220-2486

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 16, 2009

(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 25, 2009, reference 01, which disqualified the claimant from receiving benefits for a period from March 22, 2009 to June 20, 2009, due to a prior overpayment based on misrepresentation.

The hearing was held pursuant to due notice on April 16, 2009, by telephone conference call. The claimant participated. Irma Lewis, Investigator, participated on behalf of Iowa Workforce Development, Investigations and Recovery.

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 his claim for benefits effective April 29, 2007. A representative of Iowa Workforce Development issued a decision that the claimant was over paid benefits \$2,640.15 due to misrepresentation on February 26, 2008. The decision was not appealed, and it has now become final.

When the claimant filed his most recent claim effective March 8, 2009, a department representative notified Investigator Lewis. Lewis mailed a warning letter to the claimant on March 13, 2009 advising him that the department was considering a penalty on his current claim due to his overpayment history. The claimant responded with information about his current employment history, participation in a Vatterott College program, and his family financial condition.

Lewis noted the department policy guideline for a thirteen-week overpayment due to misrepresentation was the remainder of a benefit year disqualification. Lewis imposed a thirteen-week penalty due the claimant's family situation, and loss of current employment.

Although the claimant entered into a voluntary repayment agreement with the department to repay his overpayment, he lost his job after \$400 had been deducted from his wages. When claimant obtained new employment at a local foundry, he failed to timely notify the department, such that a new repayment agreement is not an option. The department garnished his wages and collected the overpayment.

The claimant was laid-off from his foundry job, and he has not found other employment. The claimant is going to night school, and he is supporting three children.

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 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 13-week period of disqualification imposed by the department is within the administrative penalty discretion of the law.

The claimant admitted his transgression related to the overpayment, and expressed remorse about what he had done. While the claimant did not follow through on his voluntary repayment from one employer to the next, the department has recouped of the overpayment. While some penalty is appropriate in this matter, it should be limited given the claimant's current unemployment, going to school, and supporting his family.

DECISION:

The decision of Iowa Workforce Development dated March 25, 2009, reference 01, is MODIFIED in favor of the claimant. The claimant is disqualified from receiving benefits for the 4-week period ending April 18, 2009. The claimant is entitled to benefits effective April 19, 2009, provided he is otherwise eligible.

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