

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

Appeal Number: 07-IWDUI-131
OC: 04/29/07
Claimant: Appellant (1)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

TIM A KING
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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

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)

September 28, 2007

(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 August 23, 2007, reference 02, which disqualified the claimant from receiving benefits for a period from August 19, 2007 to October 6, 2007, due to a prior overpayment based on misrepresentation.

The hearing was held pursuant to due notice on September 24, 2007, by telephone conference call. The claimant did not participate. Karen von Behren, Investigator, participated on behalf of Iowa Workforce Development, Investigation 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 October 16, 2005. A representative of Iowa Workforce Development issued a decision that the claimant was over paid benefits \$1,029.00 due to misrepresentation on March 14, 2007. The decision was not appealed, and it has now become final.

When the claimant filed an additional claim for benefits in August, 2007, a department representative notified Investigator von Behren. The Investigator requested an interview with the claimant on August 22 prior to imposing a penalty, but the claimant failed to report.

Department guidelines suggest a penalty ranging from twelve weeks to the remainder of a benefit year, for an individual who has incurred seven weeks of an overpayment due to misrepresentation. Investigator von Behren imposed a lesser penalty of seven weeks, as the claimant had no prior history of overpayment, and the amount was considered moderate in light of his benefit entitlement. The record shows that the department recouped the overpayment by offset procedure.

Although the claimant called-in with a phone number to be called for the hearing, he was not available when called.

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

DECISION:

The decision of Iowa Workforce Development dated August 23, 2007, reference 02, is **AFFIRMED**. The claimant is disqualified from receiving benefits for the seven-week period ending October 6, 2007.

rls