

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DAVID CARDENAS
Claimant

APPEAL 20A-UI-01097-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 12/22/19
Claimant: Appellant (1)

Iowa Code §96.5(8) – Administrative Penalty
Iowa Code §96.4(3) – Unemployment Insurance Benefits Eligibility
Iowa Admin. Code r. 871-25.1 – Misrepresentation & Fraud

STATEMENT OF THE CASE:

On February 6, 2020, David Cardenas (claimant/appellant) filed an appeal from the February 3, 2020, reference 01, unemployment insurance decision that imposed an administrative penalty and determined the claimant was ineligible to receive unemployment insurance benefits from January 26, 2020 through April 4, 2020, because he made false statements concerning his employment and earnings from January 1, 2017 through March 16, 2019. The parties were properly notified of the hearing. A telephone hearing was held on February 24, 2020. The claimant participated personally. Kendra Mills, Investigator II, participated on behalf of Iowa Workforce Development (IWD). The Department's Exhibits 1 through 7 were admitted into the record. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUE:

Did IWD properly impose an administrative penalty based upon the claimant's misrepresentation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed claims for unemployment insurance benefits with effective dates of December 25, 2016; December 27, 2017; and, December 23, 2018. Following an investigation, IWD concluded the claimant was overpaid \$4,899.00 during the period beginning January 1, 2017 through March 16, 2019, when he incorrectly reported wages earned with Marsh Concrete, LLC while concurrently filing for unemployment insurance benefits and representing that he was unemployed. (Exhibit 5.) A 15% penalty was also imposed with the overpayment, due to the claimant's misrepresentation of facts to collect unemployment insurance benefits. (Exhibit 5.)

On August 29, 2019, Kendra Mills, Investigator II, issued an unemployment insurance decision, reference 01, notifying the claimant of the overpayment and 15% penalty. (Exhibit 5.) The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by September 8, 2019. The claimant received the initial decision. He did not file an

appeal and that decision which concluded he had fraudulently obtained benefits has become final agency action. As of November 25, 2019, the claimant has paid the overpayment and 15% penalty. (Exhibit 7.) At the hearing, he did not dispute the overpayment amount or refute his failure to appeal the overpayment.

The claimant filed an original claim for benefits with an effective date of December 22, 2019, which triggered a review of whether he should be disqualified from future benefits due to fraud committed in the prior 36 months. Kendra Mills, Investigator II, sent the claimant a letter dated January 6, 2020, informing him of IWD's intent to disqualify him from receiving unemployment insurance benefits because of the prior false statements or misrepresentations. (Exhibit 1.) The claimant did not respond to the letter by Mills' deadline in the letter.

Mills issued another unemployment insurance decision dated February 3, 2020, reference 01, which imposed a ten-week disqualification from January 26 through April 4, 2020 as an administrative penalty for the claimant's prior false statements from January 1, 2017 through March 16, 2019. (Exhibit 6.) According to agency guidelines, Mills could have disqualified the claimant for the remainder of the benefit year as he provided false information in more than nine weeks. However, Mills reviewed the investigation and determined the flagrant misrepresentation of his wages earned occurred primarily in the final claim year she had investigated. As a result, she used her discretion and only disqualified him for ten weeks.

The claimant opined that he should be allowed to receive unemployment insurance benefits because he paid the overpayment and monetary penalty. He does not believe he should be penalized a second time. The claimant read the unemployment insurance handbook which explains how to calculate wages earned each week and the penalties for not properly reporting that information. However, he explained he reported the wages his employer told him to report each week even though it did not match the wages and hours he had actually worked.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was properly disqualified from benefits due to misrepresentation. Benefits are denied from January 26, 2020 through April 4, 2020.

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. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Code section 96.5(8) provides:

Causes for disqualification.

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 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.

Iowa Code section 96.16(4) provides:

Offenses.

4. Misrepresentation.

a. An individual who, by reason of the nondisclosure or misrepresentation by the individual or by another of a material fact, has received any sum as benefits under this chapter while any conditions for the receipt of benefits imposed by this chapter were not fulfilled in the individual's case, or while the individual was disqualified from receiving benefits, shall, be liable to repay to the department for the unemployment compensation fund, a sum equal to the amount so received by the individual. If the department seeks to recover the amount of the benefits by having the individual pay to the department a sum equal to that amount, the department may file a lien with the county recorder in favor of the state on the individual's property and rights to property, whether real or personal. The amount of the lien shall be collected in a manner similar to the provisions for the collection of past-due contributions in section 96.14, subsection 3.

b. The department shall assess a penalty equal to fifteen percent of the amount of a fraudulent overpayment. The penalty shall be collected in the same manner as the overpayment. The penalty shall be added to the amount of any lien filed pursuant to paragraph "a" and shall not be deducted from any future benefits payable to the individual under this chapter. Funds received for overpayment penalties shall be deposited in the unemployment trust fund.

Iowa Admin. Code r. 871-25.1, provides in relevant part:

Definitions:

...

"Fraud" means the intentional misuse of facts or truth to obtain or increase unemployment insurance benefits for oneself or another or to avoid the verification and payment of employment security taxes; 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 the department, shall not act upon it to their, or its, legal injury.

...

"Misrepresentation" means to give misleading or deceiving information to or omit material information; to present or represent in a manner at odds with the truth.

Iowa Admin. Code r. 871-25.9, provides in relevant part:

Administrative penalties.

(1) When, subsequent to the filing of a valid claim, it has been determined that within the preceding 36 calendar months the claimant fraudulently reported or failed to report wages earned during a week, or failed to disclose a material fact upon separation from employment from such claimant's most recent employment unit or employer, with intent to obtain benefits, or failed to disclose a material fact concerning any claimant's ability to work, availability for work, or any other eligibility requirements, with intent to obtain benefits, 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.

(2) Penalties

...

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 investigation 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 department shall also consider the filing of fraud charges whenever an administrative penalty is imposed against a claimant. If the same offense is repeated, loss of benefits through the end of the benefit year will result.

c. The department shall issue a determination which sets forth the specific penalty being applied.

(1) 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.

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. Iowa Code §96.5(8). 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. *Id.* IWD's investigator has broad discretion to determine the specific penalty for deliberate falsification for the purpose of obtaining or increasing unemployment insurance benefits. Iowa Admin. Code r. 871-25.9(2). "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." Iowa Admin. Code r. 871-25.9(2)c. The administrative penalty recommended for falsification ranges from three weeks through the end of the benefit year. *Id.* This administrative penalty shall be imposed in addition to a prior 15% penalty in conjunction with an overpayment.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining

the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the IWD investigator presented sufficient evidence to support the administrative penalty. An 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, and described her rationale for the imposition of penalty. She relied upon information gathered during the prior fraud investigation and used agency guidelines to determine the penalty.

The agency is required to issue an administrative penalty disqualifying a claimant from receiving benefits when there is a finding of fraud in the prior 36 months. The agency determined the claimant committed fraud in the claim year prior to the current one. The claimant did not appeal that decision and it has become final agency action. As a result, the claimant's contention that he should not be subjected to the penalty of disqualification as he has already paid the overpayment and 15% penalty is not persuasive. The claimant made false statements or misrepresentations and acted with deliberate ignorance of or reckless disregard for the requirement to accurately report wages earned. He failed to disclose material facts, with the intent to defraud by obtaining benefits to which he was not entitled, when he underreported wages earned with his employers. Therefore, the imposition of the administrative penalty was proper and benefits are denied from January 26, 2020 through April 4, 2020.

DECISION:

The February 3, 2020, reference 01, unemployment insurance decision is affirmed. IWD correctly imposed the administrative penalty due to the claimant's misrepresentation. The claimant is ineligible to receive unemployment insurance benefits from January 26, 2020 through April 4, 2020.



Stephanie R. Callahan
Administrative Law Judge

February 28, 2020
Decision Dated and Mailed

jlb/scn