

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

Appeal Number: 08-IWDUI-037
OC: 1/27/08
Claimant: Appellant (3)

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.

MICHAEL G CARLSEN
2327 QF LANE
MADRID IA 50156-7468

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)

March 25, 2008

(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 February 21, 2008, reference 01, which disqualified the claimant from receiving benefits for a period from January 27, 2008 to July 12, 2008, due to a prior overpayment based on misrepresentation.

The hearing was held pursuant to due notice on March 24, 2008, by telephone conference call. The claimant participated. Cindy Stroud, Investigator, participated on behalf of Iowa Workforce Development, Investigation 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 July 9, 2006. A representative of Iowa Workforce Development issued a decision that the claimant was over paid benefits \$577.00 due to misrepresentation on January 31, 2007. A subsequent department decision was issued that the claimant was overpaid benefits \$1,601.00 due to misrepresentation on May 4, 2007. The decisions were not appealed, and they have now become final.

When the claimant filed his most recent claim effective January 27, 2008, a department representative notified Investigator Stroud. Stroud mailed a warning letter to the claimant to his address of record on January 30, 2008 regarding his \$2,178 overpayment. The letter warned the claimant the department was considering a penalty, but it gave him an opportunity to respond. The claimant failed to respond.

The claimant had fourteen weeks of overpayment that totaled \$2,178.00. The claimant failed to report any wages for the fourteen weeks. The department policy allows it to impose a penalty for the remainder of the benefit year when there are nine or more weeks of overpayment due to misrepresentation.

Investigator Stroud elected to impose a penalty of two-weeks of disqualification for each of the fourteen weeks the claimant incurred an overpayment. The department decision reflects a twenty-four week period (January 27, 2008 to July 12, 2008). Besides the department policy, Stroud considered that the claimant failed to respond to her notice to offer any explanation for his conduct, and that he failed to make any repayment of the overpayment.

When the claimant filed his January 2008 unemployment claim, based on a department-representative's statement, he intended to use his future entitlement to repay the overpayment.

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 correct the disqualification period intended pursuant to Iowa Code Section 96.4-3 and Iowa Code Section 96.5-8. The claimant was the subject of overpayment decisions due to misrepresentation within the time period established by the law, which were not appealed, and they have now become final. The 28-week period of disqualification period intended by the department is within the administrative penalty discretion of the law.

Investigator Stroud proposed a 28-week disqualification penalty-period that is two-weeks of disqualification for each of the fourteen-weeks of overpayment, but the decision covers a period of 24-weeks. According to department policy, the disqualification period is modest given that it could have been the remainder of the benefit year. The claimant has offered no mitigating circumstance such as a reasonable explanation as to how he failed to report wages in each of 14-weeks or why he made no attempt to repay any of the \$2,178 overpayment.

DECISION:

The decision of Iowa Workforce Development dated February 21, 2008, reference 01, is MODIFIED ADVERSELY to the claimant. The claimant is disqualified from receiving benefits for the 28-week period ending August 9, 2008.

rls