

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

Appeal Number: 05-IWDUI-029
OC: 12/19/04
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.**

DAVID W BURROW
1247 315TH AVENUE
FORT ATKINSON IA 52144

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)

February 18, 2005

(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 January 12, 2005, reference 01, which disqualified the claimant from receiving benefits for a period from December 19, 2004 to January 15, 2005, due to a prior overpayment based on misrepresentation.

The hearing was held pursuant to due notice on February 14, 2005, by telephone conference call. The claimant participated. Sally Oordt, 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 December 21, 2003. A representative of Iowa Workforce Development issued a decision that the claimant was over paid benefits \$830.00 due to misrepresentation on October 11, 2004. The decision was not appealed, and it has now become final.

When the claimant filed his most recent claim effective December 19, 2004, a representative of the department notified Investigator Oordt. Oordt mailed a letter to the claimant dated December 29, 2004 that warned him about the department imposing a penalty, but he did not respond.

The department has a policy of imposing a penalty of one to three weeks of disqualification for each week of a fraud overpayment given the circumstances of the claimant's matter. Stroud noted that the claimant made two payments of \$100 each towards the repayment of the overpayment prior to filing his most recent unemployment claim. In addition, the \$830 overpayment was repaid and satisfied in full by an offset procedure of benefits regarding the claimant's most recent claim. Stroud concluded that a 4-week penalty period would be appropriate in this matter.

The claimant made repayments on his overpayment prior to his lay-off from employment.

REASONING AND CONCLUSIONS OF LAW:

The 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 4-week period of disqualification imposed by the department is within the administrative penalty discretion of the law. The claimant showed a good faith effort to repay his overpayment by making substantial payments prior to his lay-off, and then by satisfying the overpayment with offsets from his current claim benefits. In essence, the claimant has been penalized on his current claim by having benefits withheld to repay the overpayment. A minimal penalty of 1-week of disqualification for each of the 3-weeks the claimant incurred an overpayment is more appropriate.

DECISION:

The decision of Iowa Workforce Development dated January 12, 2005, reference 01, is MODIFIED in favor of the claimant. The claimant is disqualified from receiving benefits for the 3-week period ending January 8, 2005. The claimant is entitled to receive benefits effective January 9, 2005, provided he is otherwise eligible.

rls