

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

Appeal Number: 11IWDUI109
OC: 06/13/10
Claimant: Appellant (1)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

DOUGLAS E. GIBSON
214 N. MARKET APT. 201
OSKALOOSA, IA 52577

INVESTIGATIONS AND RECOVERY, IWD
150 DES MOINES ST.
DES MOINES, IA 50309

JOE WALSH, IWD

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

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.

(Administrative Law Judge)

July 29, 2011

(Dated and Mailed)

Iowa Code section 96.5-8 – Administrative Penalty
Iowa Code section 96.4-3 – Ineligibility for Benefits

STATEMENT OF THE CASE

Claimant Douglas Gibson filed an appeal from a decision issued by Iowa Workforce Development (“IWD”) on February 22, 2011, reference 05, finding Gibson was ineligible to receive unemployment insurance benefits because he made false statements concerning his employment and earnings and did so to receive unemployment

insurance benefits from March 28, 2010 through June 26, 2010. IWD imposed an administrative penalty from February 20, 2011 through March 12, 2011.

When IWD transmitted the file to the Iowa Department of Inspections and Appeals IWD mailed a copy of the administrative file to Gibson. On July 28, 2011, a telephone hearing was held before Administrative Law Judge Heather L. Palmer. Gibson did not appear at the hearing as directed by the Rescheduled Notice of Telephone Hearing. The hearing was originally scheduled for July 13, 2011, but Gibson's apartment number was left off the address. Therefore, the hearing was rescheduled. Gibson's copies of the Notice of Telephone Hearing and Rescheduled Notice of Telephone Hearing have not been returned to my office as undeliverable mail. I waited five minutes before proceeding with the hearing to accommodate a late call from Gibson. He did not appear. Karen von Behren appeared and testified on behalf of IWD. Exhibits 1 through 3 were admitted into the record.

ISSUES

Whether the Department correctly imposed an administrative penalty on the basis of false statements made by the Claimant.

Whether the Department correctly determined the claimant is ineligible to receive unemployment insurance benefits.

FINDINGS OF FACT

Gibson worked for Maxwell Tiling. In April through June 2010 he received unemployment insurance benefits. Gibson did not report any earnings. IWD learned Gibson was working for Maxwell Tiling. IWD found Gibson received an overpayment of \$1,146, due to misrepresentation.

On November 23, 2010, IWD issued a decision finding Gibson had been overpaid \$1,146 in unemployment insurance benefits for failing to report wages earned with Maxwell Tiling from March 28, 2010 through June 26, 2010. IWD determined the overpayment was due to misrepresentation. Gibson did not appeal the decision. Following the November 2010 overpayment decision, IWD flagged Gibson's case for imposition of an administrative penalty in the future.

Gibson later applied for unemployment insurance benefits, which generated an inquiry by IWD. von Behren sent Gibson a letter and Notice of Unemployment Insurance Fact-Finding Interview, attaching the documents from the underlying overpayment decision from November 2010. The letter indicated IWD was determining whether to impose an administrative penalty. Gibson responded in writing, stating there was a misunderstanding between himself and his employer that caused the overpayment. Gibson did not attend the hearing to explain his misunderstanding.

REASONING AND CONCLUSIONS OF LAW

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.¹ 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.² The 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.³

IWD's rules define intent as "the design, resolve, or determination with which an individual or group of individuals acts in order to reach a preconceived objective."⁴ Fraud is defined as "the intentional misuse of facts or truth to obtain or increase unemployment insurance benefits for oneself . . . ; 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 [IWD], shall not act upon it to their, or its, legal injury."⁵

The governing statute and rules do not define the terms willfully and knowingly.⁶ Therefore, it is necessary to turn to the rules of statutory and regulatory interpretation. The purpose of statutory interpretation is to determine the true intent of the legislature.⁷ When the legislature has not defined the words of a statute, the Iowa Supreme Court looks to prior decisions of the court, similar statutes, dictionary definitions, and common usage.⁸ The rules of statutory interpretation also govern the interpretation of an administrative agency's rules.⁹ The courts construe administrative rules together, using "common sense and sound reason."¹⁰

Black's Law Dictionary defines knowing as "having or showing awareness or understanding" and "deliberate; conscious."¹¹ Willful is defined as "voluntary and intentional, but not necessarily malicious."¹²

¹ Iowa Code § 96.5(8).

² *Id.* § 96.5(8).

³ 871 IAC 25.9(2)c.

⁴ *Id.* 25.1.

⁵ *Id.*

⁶ Iowa Code section 96.16(5)b defines knowingly for purposes of the subsection as "having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the requirement or prohibition involved."

⁷ *Bob Zimmerman Ford, Inc. v. Midwest Automotive I, L.L.C.*, 679 N.W.2d 606, 609 (Iowa 2004).

⁸ *Id.* at 609 (citing *Bernau v. Iowa Dep't of Transp.*, 580 N.W.2d 757, 761 (Iowa 1998)).

⁹ *Messina v. Iowa Dep't of Job Serv.*, 341 N.W.2d 52, 56 (Iowa 1983).

¹⁰ *Id.*

¹¹ *Black's Law Dictionary* (7th Ed. 1999).

¹² *Id.*

Gibson did not report his earnings from Maxwell Tiling on April 10, 2010, May 22, 2010, and June 26, 2010. Gibson did not appear at hearing to explain why he failed to correctly report his earnings. I conclude Gibson's statements to IWD on April 10, 2010, May 22, 2010, and June 26, 2010 were willful and false statements knowingly made to receive benefits he was not entitled to receive. Imposition of an administrative penalty is appropriate.

von Behren imposed an administrative penalty of three weeks because Gibson failed to correctly report his earnings for three weeks. IWD's rules afford the investigator discretion to determine the degree and severity of the penalty, based on the nature of the offense and facts.¹³ I cannot conclude von Behren's imposition of an administrative penalty for three weeks is improper. Because IWD correctly imposed an administrative penalty, Gibson is also ineligible to receive unemployment insurance benefits from February 20, 2011 through March 12, 2011.¹⁴ IWD's decision should be affirmed.

DECISION

IWD's decision dated February 22, 2011, reference 05 is AFFIRMED. IWD correctly imposed an administrative penalty disqualifying Gibson from receiving unemployment insurance benefits from February 20, 2011 through March 12, 2011.

hlp

¹³ 871 IAC 25.9(2)c.

¹⁴ Iowa Code § 96.4(3).