

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

**Appeal Number: 07-IWDUI-149**  
**OC: 08/17/07**  
**Claimant: Appellant (1)**

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, 4<sup>TH</sup> Floor Lucas Building, Des Moines, Iowa 50319.**

**KELVIN N HOWELL**  
**1610 FRANKLIN AVENUE**  
**DES MOINES IA 50314-1525**

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

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(Administrative Law Judge)

November 16, 2007

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(Decision Dated & Mailed)

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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 October 9, 2007, reference 01, which disqualified the claimant from receiving benefits for a period from August 12, 2006 to December 29, 2007, due to a prior overpayment based on misrepresentation.

The hearing was held pursuant to due notice on November 14, 2007, by telephone conference call. The claimant did not participate. Irma Lewis, Investigator, participated on behalf of Iowa Workforce Development, Investigations and Recovery. The hearing was held by telephone after the in-person mailed to the claimant was returned by the US Postal Service, and the claimant provided no change of address.

#### 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 July 23, 2006. A representative of Iowa Workforce Development issued a decision that the claimant was over paid benefits \$880.00 due to misrepresentation on December 7, 2006. The decision was not appealed, and it has now become final.

When the claimant filed his most recent claim effective August 12, 2007, a department representative notified Investigator Lewis. Lewis mailed the claimant a warning letter dated August 15, 2007 that the department was considering imposing a penalty on his current claim due to the \$880 overpayment. The claimant did not respond. When the department attempted a garnishment of the claimant's wages on or about July 7, 2007 in order to repay the overpayment, he quit employment.

The claimant had an overpayment that occurred during a ten-week period. The department has a policy that allows a disqualification for the remainder of the benefit year when the overpayment is ten or more weeks. Lewis elected a two-disqualification for each of the ten-weeks of overpayment, because the claimant had no prior record of an overpayment.

The record shows the claimant has made no voluntary repayment of the \$880 overpayment, and only a modest amount (\$12) has been collected by offset.

The claimant did not participate in this hearing. The postal service returned the hearing notice for November 8 mailed to the claimant with no forwarding address. The claimant has not provided the department with a new address of record.

#### 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 twenty-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 October 9, 2007, reference 01, is AFFIRMED. The claimant is disqualified from receiving benefits for the 20-week period ending December 29, 2007.

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