

issued an *Unemployment Insurance Decision* finding that McKee had been overpaid unemployment insurance benefits in the net amount of \$1,485.49 between the weeks of October 11, 2015 and December 12, 2015 because he failed to report earnings from Heishman Ag LLC. The decision further stated: “A 15% PERCENT PENALTY WILL BE ADDED DUE TO MISREPRESENTATION.” (Exh. C2)(emphasis in original). Mr. McKee did not appeal the decision and it has become final. (Ellenwood testimony)

Subsequently, McKee filed a new claim for unemployment insurance benefits with an effective date of April 16, 2017. (Exh. B) In response, IWD Investigator Kasandra Ellenwood sent McKee a letter dated April 25, 2017, reminding him of the previous overpayment and stating:

Because you provided false statements on your claim(s), Iowa Workforce Development will make a determination regarding the assessment of an Administrative Penalty on your current unemployment insurance claim. An Administrative Penalty is a disqualification from receiving future unemployment benefits for a specific period of time because false statements were given on your prior claim(s) for benefits. (See attached — 96.5 Causes for Disqualification).

YOU ARE BEING GIVEN THE OPPORTUNITY TO RESPOND BY MAIL, FAX, OR EMAIL CONCERNING THIS ISSUE (CONTACT INFO LIST UNDER SIGNATURE).

(Exh. C)

Mr. McKee did contact Investigator Ellenwood by telephone on May 2, 2017. During their conversation, McKee told her that he working on a farm during the period involved in the overpayment and there were weeks when they could not get in the fields and he did not get a paycheck. Mr. McKee stated he did not report wages when he was not working fulltime. (Exh. C3; Ellenwood testimony).

Investigator Ellenwood reviewed the documentation from the previous overpayment and determined that, during the 9 week period involved in the overpayment, Mr. McKee reported each week that he earned no wages when Heishman Ag reported he earned the following:

<u>Week Ending</u>	<u>Wages Reported by Employer</u>
October 17, 2015	\$1095.00
October 24, 2015	612.00
October 31, 2015	144.00
November 7, 2015	576.00
November 14, 2015	744.00
November 21, 2015	0.00
November 28, 2015	0.00

December 5, 2015	0.00
December 12, 2015	468.00

(Exh. C6; C7)

Ellenwood noted that Mr. McKee did not contest the original overpayment which clearly stated the agency had determined was due to misrepresentation on his part. She also considered the fact Mr. McKee has no history of other overpayments due to misrepresentation. Additionally, Ellenwood consulted with the investigator who had been involved in the previous overpayment who stated she had no additional information. Ellenwood then reviewed the Iowa and Administrative Codes as well as an Iowa Workforce Development Handbook which contains guidelines for determining the number of weeks to include in an administrative penalty. Upon doing so, she determined a penalty disqualifying Mr. McKee from receiving benefits for a period of 9 weeks, from May 21, 2017 through July 29, 2017 was appropriate. The decision imposing that disqualification was subsequently issued on May 26, 2017. (Appeal Summary; Exhs. B; C2; Ellenwood testimony)

Mr. McKee filed this appeal requesting consideration of the fact he has repaid the overpayment and the 15% penalty associated with it, has been approved to attend classes, and needs the money to pay for his training. McKee also stated: "I have learned my lesson to not misrepresent my claims." (Exh. A)

At hearing, Mr. McKee testified that he had no disagreement with the facts as presented by Ms. Ellenwood, although he maintained his original failure to report his earnings was due to ignorance of the reporting requirements as opposed to any intent to obtain benefits to which he was not entitled. McKee further explained that he filed this appeal for the sole reason that the administrative penalty will create a tremendous financial hardship for him. Mr. McKee noted that he is currently enrolled in the Heating, Air Conditioning, and Refrigeration Technology Program at Des Moines Area Community College which will require that he purchase tools and equipment costing approximately \$1,500. He asked that he be granted leniency so he can continue his training. (Appellant's Exh. 1-4; McKee testimony)

CONCLUSIONS OF LAW

Iowa Workforce Development is authorized to impose an administrative penalty when it determines that an individual has, within the thirty-six preceding 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 obtain unemployment benefits to which the individual is not entitled.¹ The imposition of an administrative penalty results in the forfeiting of all unemployment benefits for a period of time to be determined by the Department; the period, however, cannot exceed the remainder of the individual's benefit year.²

¹ Iowa Code § 96.5(8) (2017).

² *Id.*

The Department's investigator considers the facts and nature of the offense in determining the degree and severity of the penalty. The penalty range for falsification is from three weeks through the remainder of the benefit year. The investigator has broad discretion to determine the actual penalty to be imposed within the range.³

At hearing, Mr. McKee contended the inaccurate information he provided to IWD while reporting claims from October 11, 2017 through December 12, 2015 was unintentional and due to ignorance of the law. McKee stated he did not know one was to report wages during weeks of less than full-time employment therefore he did not make accurate reports of his wages.

For the nine weeks in question, Mr. McKee's employer reported he earned wages during six. During those six weeks, McKee earned anywhere from \$1,095 to \$144. There is no credible way to explain his serial nonreporting of wages except to conclude that McKee was willfully and knowingly making false statements with the intent to obtain benefits to which he was not entitled. Even if Mr. McKee was confused about whether to report during a week when he was not fully employed, he surely must have known he needed to report a week in which he earned over \$1000 of wages.

McKee also urged that an administrative penalty should not be imposed because he has already paid back the overpayment and the 15% penalty associated with it. IWD's ability to impose an administrative penalty does not depend in any fashion on whether an individual has paid back an overpayment. An administrative penalty can be imposed even where, as here, the individual has fully paid back an overpayment.

Finally, while Mr. McKee asks for leniency due to the fact the administrative penalty represents a financial burden to him that is the case whenever the agency imposes a penalty. To allow an exception to the law because a person would be negatively affected financially would result in a *de facto* determination that a penalty may never be imposed because the exception would swallow the rule.

Based on the foregoing, the Department's decision to impose an administrative penalty was correct and the length of administrative penalty imposed does not exceed the time period allowed in the Department's regulations. Mr. McKee's testimony that his underreporting of wages was unintentional was not credible and his argument that an administrative penalty should not be imposed when a claimant has repaid an overpayment and when the penalty will result in a financial burden has no support in the applicable law or regulations.

DECISION

Iowa Workforce Development's decision dated May 26, 2017 (reference 01) is AFFIRMED. IWD correctly imposed the administrative penalty. IWD shall take any action necessary to implement this decision.

³ 871 Iowa Administrative Code (IAC) 25.9(2).

Dated and mailed this August 8, 2017.



Kerry Anderson
Administrative Law Judge

cc: Christopher McKee (By Mail and Email)
Jodi Douglas, IWD (By Email)
Kasandra Ellenwood, IWD (by Email)
Nicholas Olivencia, IWD (By Email)
Emily Chafa, IWD UI Appeals Manager (By Email)
Nicholas Olivencia, IWD (By Email)
Joni Benson, IWD (By Email)

APPEAL RIGHTS

This decision shall become final agency action unless the Appellant or any interested party appeals to the Employment Appeal Board within fifteen (15) days after the date of this decision by submitting a signed letter or a signed written Notice of Appeal by mail, personal delivery, or fax to:

Employment Appeal Board
Lucas State Office Building, 4th Floor
Des Moines, Iowa 50319
(515) 281-7191 (fax)

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.

An appeal to the Employment Appeal Board must:

- Include the name, address, and social security number of the claimant;
- Reference the decision from which the appeal is taken;
- Clearly state that an appeal from such decision is being made;
- Clearly state the grounds upon which such appeal is based; and
- Be signed by the party appealing.

On appeal to the Employment Appeal Board, the Appellant may represent himself or herself or may obtain the assistance of an attorney or another representative at the Appellant's own expense. The Appellant may qualify for free legal assistance from Iowa Legal Aid. To apply, call Iowa Legal Aid at **(800) 532-1272** or visit **www.iowalegalaid.org**. More information about obtaining legal advice is also available on the Administrative Hearings Division website at **http://dia.iowa.gov/ahd/**. The claimant should continue to file weekly claims for unemployment insurance benefits while the appeal is pending. A claimant can only receive benefits for the weeks he or she filed a valid claim.