

BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

LEON C MOSLEY

Claimant

and

IWD INVESTIGATIONS & RECOVERY

HEARING NUMBER: 20BUI-03351

EMPLOYMENT APPEAL BOARD
DECISION

N O T I C E

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A REHEARING REQUEST shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.3-7, 96.4-3

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The agency appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds the administrative law judge's decision is correct. The administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED**.

IWD cites to us rule 25.9 which is in all relevant respects consistent with Iowa Code §96.5(8). Both state that if during a claim year it is determined that a claimant committed benefit fraud within the preceding 36 months, then the claimant is denied for the week the decision is made and "a period of not more than the remaining benefit period as determined by the department according to the circumstances of each case." Iowa Code §96.5(8). The question for us is whether this allows IWD to issue multiple fraud determinations in multiple benefit years for the same conduct? We hold it does not.

Here the Claimant was issued a determination back in 2019 telling him that he must repay all benefits, plus a 15% penalty before he could collect benefits. He repaid the fraudulent benefits, plus the 15%, before that benefit year was up. He had claimed only through December, 2018 but could have claimed for additional 2018-19 benefits from the time of repayment forward, unless barred from doing so by a fraud determination issued under Iowa Code §96.5(8).

03351

If we allowed IWD to wait to impose a §96.5(8) penalty until the Claimant next establishes a benefit year then the limitation “a period of not more than the remaining benefit period” disappears. The agency could issue a fraud determination in 2018, impose a requirement of payback and a 15% penalty, and in addition disqualify until the end of the 2018 claim year. Then the claimant could file a claim in 2019. Since 2018 is within 36 months, under IWD’s argument, it could then also disqualify the claimant until the end of the 2019 claim year. And then when the claimant files again in 2020, since 2018 is still within 36 months, it could then disqualify the claimant until the end of the 2020 claim year. It’s three years of disqualification for one period of fraud that has been repaid. The whole notion of “a period of not more than the remaining benefit period” disappears under this approach.

Our approach is that *once the agency detects the fraud and issues a decision* then the agency can: (1) require payback of all benefits collected (2) require a 15% penalty (3) disqualify until the *later* of the end of the benefit year or payback of all moneys owed as a result of fraud. This prevents a Claimant from collecting benefits in a benefit year when fraud is detected merely by paying back all money owed. It also allows IWD to look back 36 months where the prior fraud was not previously detected. So, for example, if the agency had not detected the fraud until 2020 then the agency could not only impose the payback requirements (plus 15%) but could also disqualify until the end of the 2020 claim year. This way the agency has up to 36 months to detect fraud, and the ability to impose *current* consequences for that fraud. But we do not think the Code contemplates an ability to impose a penalty, have the Claimant decide things like whether to appeal based on what that penalty is, and then years later enhance that penalty. For this reason, we affirm the Administrative Law Judge.

Ashley R. Koopmans

James M. Strohman

Myron R. Linn

RRA/fnv