

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

**Appeal Number: 11IWDUI167**

**OC: 11/7/10**

**Claimant: Appellant (2)**

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 Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>TH</sup> 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.

**WILLIAM DAVIS  
2871 170TH STREET  
FORT MADISON, IA 52627**

STATE CLEARLY

**IOWA WORKFORCE DEVELOPMENT  
INVESTIGATIONS AND RECOVERY  
150 DES MOINES STREET  
DES MOINES IA 50309**

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.

JOE WALSH, IWD

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(Administrative Law Judge)

August 31, 2011

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(Decision Dated & Mailed)

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## STATEMENT OF THE CASE

William Davis filed an appeal from a decision issued by Iowa Workforce Development (the Department) dated May 26, 2011, reference 02. In this decision, the Department imposed an administrative penalty on Mr. Davis which disqualified him from receiving unemployment insurance benefits from May 22, 2011 through August 27, 2011. The decision stated that the administrative penalty was imposed on the basis of Mr. Davis having made false statements concerning his employment and earnings in order to receive unemployment insurance benefits from September 26, 2010 through December 18, 2010.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals on July 12, 2011 to schedule a contested case hearing. A Notice of Telephone Hearing was mailed to all parties on July 15, 2011. On August 2, 2011, a telephone appeal hearing was held before Administrative Law Judge Laura Lockard.

Investigator Karen von Behren represented the Department and presented testimony. Appellant William Davis appeared and presented testimony. Exhibits 1 through 7 were submitted by the Department and admitted into the record as evidence.

### ISSUE

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

### FINDINGS OF FACT

William Davis filed a claim for unemployment benefits with an effective date of November 7, 2010. Mr. Davis made claims for and received unemployment benefits from October through December, 2010. (Exh. 5).

During the spring of 2011, the Department conducted an audit of William Davis' unemployment insurance claim. Mr. Davis' employer, Liberty Transport Inc., reported that Mr. Davis earned wages during seven weeks between the week ending October 2, 2010 and the week ending December 18, 2010. Mr. Davis reported wages in six weeks during the same time period, although the weeks he reported that he earned wages did not always coincide with the weeks his employer reported he earned wages. Additionally, the amounts reported by Mr. Davis in the weeks reported were significantly less than what the employer reported he earned. The following chart sets out the amounts claimed by Mr. Davis and reported by Liberty Transport during each of the weeks when there was a discrepancy:

<i>Week ending</i>	<i>Reported by claimant</i>	<i>Reported by employer</i>
10/2	\$120	\$430
10/9	\$0	\$499
10/16	\$150	\$0
10/30	\$150	\$412
11/13	\$200	\$946
11/20	\$0	\$719
12/11	\$125	\$637
12/18	\$0	\$364
12/25	\$90	\$0

(Exh. 5).

On May 10, 2011, the Department mailed Mr. Davis a preliminary audit notice informing him of a potential overpayment of \$1,929. The notice included the Wages Cross Match from that Liberty Transport completed showing Mr. Davis' earned wages for each of the weeks in question and a worksheet the Department prepared outlining the potential overpayment. A letter was also included with the preliminary audit notice, which informed Mr. Davis that because he gave false information on claims made from September 26 through December 18, 2010, the Department would be making a

determination regarding whether to assess an administrative penalty. The audit notice and letter informed Mr. Davis that he had the opportunity to respond to provide information regarding the discrepancy in reported earnings by May 23, 2011. Mr. Davis did not respond. (Exh. 4-7; Von Behren testimony).

On May 26, 2011, the Department issued a decision imposing an administrative penalty for fourteen weeks, from May 22, 2011 through August 27, 2011. On July 19, 2011, the Department issued a decision finding that Mr. Davis was overpaid in the amount of \$1,929. As of the date of hearing, the Department had not documented that Mr. Davis filed an appeal of that decision. (Von Behren testimony).

During the time period at issue, Mr. Davis worked as an over-the-road truck driver with Liberty Transport. He was working on an as-needed, sporadic basis. He was paid weekly on Fridays during weeks that he worked. Mr. Davis was paid wages based on the number of miles that he drove for Liberty Transport. Liberty Transport issued two separate payments to Mr. Davis each Friday: a wage check and a per diem check. The total amount in the wage check plus the per diem check was determined by the number of miles driven; the company, however, issued part of the wages as a per diem allowance based on the number of days that Mr. Davis was gone for work. The per diem allowance was not in addition to his wages; rather, it was subtracted from his wages and paid separately. Mr. Davis' understanding is that taxes were withheld on the wage check, whereas he did not have to pay taxes on the per diem check until the end of the year. (Davis testimony).

When Mr. Davis talked with a Department representative upon filing his initial claim he was told to report his earnings before taxes — in effect, his gross wages. Mr. Davis misunderstood this guidance and erroneously believed that he was to report only the wages on which taxes were not withheld. What he reported each week when he called in to make his unemployment claim was the per diem amount that he had earned in the applicable week. He did not include the non-per diem wages earned when he made his claims. (Davis testimony).

### **REASONING AND CONCLUSIONS OF LAW**

The Department 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.<sup>1</sup> 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.<sup>2</sup>

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<sup>1</sup> Iowa Code § 96.5(8) (2011).

<sup>2</sup> *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.<sup>3</sup>

There is no doubt here that Mr. Davis incorrectly reported his wages to the Department during the months of October through December, 2010. I credited Mr. Davis' testimony at hearing that the reason he underreported wages was his misunderstanding of what he was told about reporting gross earnings. Even at hearing, Mr. Davis appeared not to completely comprehend the distinction between what he was told – to report wages earned before taxes (i.e. gross earnings) – and what he did, which was to report only wages on which no taxes were withheld upon payment. Additionally, there were some weeks when Liberty Transport reported no wages, but Mr. Davis did report wages. This is inconsistent with the conclusion that Mr. Davis was deliberately underreporting wages in order to collect unemployment benefits to which he was not entitled.

Under the circumstances in this case, I do not find that Mr. Davis underreported wages with the intent to obtain unemployment insurance benefits to which he was not entitled. Mr. Davis misunderstood what he was supposed to report. While a misunderstanding will not excuse an overpayment, in order to uphold the imposition of an administrative penalty I must conclude that Mr. Davis had the requisite intent to defraud the Department. The requisite intent is not present on the evidence here. The Department's decision to impose an administrative penalty must be reversed.

### **DECISION**

Iowa Workforce Development's decision dated May 26, 2011, reference 2, is REVERSED. The Department's imposition of an administrative penalty was in error. The Department shall promptly issue benefits to Mr. Davis for the weeks during the administrative penalty period when he was otherwise eligible. The Department shall take any additional steps necessary to implement this decision.

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<sup>3</sup> 871 Iowa Administrative Code (IAC) 25.9(2).