

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

Appeal Number: 06-IWDUI-117
OC: 09/04/05
Claimant: Appellant (4)

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, 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.

DAVID E DITTMER
2013 NORTH DIVISION STREET
DAVENPORT IA 52802

STATE CLEARLY

INVESTIGATION 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

(Administrative Law Judge)

May 19, 2006

(Decision Dated & Mailed)

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 April 19, 2006, reference 02, which disqualified the claimant from receiving benefits for a period from April 16, 2006 to the remainder of his benefit year on September 3, 2006, due to a prior overpayment based on misrepresentation.

The hearing was held pursuant to due notice on May 15, 2006, by telephone conference call. The claimant participated, and by his witness, Ardeanie Cale, Owner/Manager of Midwest Exhibits & Display. Tom Carnahan, Investigator, participated on behalf of Iowa Workforce Development, Investigations and Recovery. Department Exhibits One through Four were received as evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses, 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 September 5, 2004. A representative of Iowa Workforce Development issued a decision that the claimant was over paid benefits \$1,874.00 due to misrepresentation on January 10, 2006. The decision was not appealed, and it has now become final.

When the claimant filed his most recent claim effective September 4, 2005, a department representative notified Investigator Carnahan. Carnahan sent a notice to the claimant regarding a fact-finding interview for April 3, 2006, but the claimant did not recall receiving it. When the claimant did not participate in the interview, Carnahan considered the evidence in the record before imposing a penalty.

The claimant had five unemployment claims without incident leading to his claim of September 5, 2004. After the department audited the claim, it determined the claimant failed to report any wages during a five-week period where he worked about forty hours each week and earned gross wages ranging from \$540 to \$679. Each week, the claimant answered no to the question whether he worked the weeks claimed, and he did not report any wages.

The department issued a decision that the claimant was overpaid benefits \$1,874 for the six-weeks ending June 4, 2005, pursuant to misrepresentation. The claimant did not appeal the decision. After the claimant received the decision, he reported what occurred to Midwest Owner Cale and he reviewed the employer wage records against his personal records. The claimant learned that he had erred by failing to report his wages, and that the employer had correctly reported his earnings to the department.

The claimant could not explain why he failed to report his wages other than he was experiencing financial and personal family problems. The overpayment has been repaid by department-offset procedure.

The department has a policy guideline of imposing a penalty ranging from one week to the remainder of the benefit year given the circumstances of this case. Carnahan elected a remainder of the benefit year penalty period given the "lateness" of the department determination.

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 should be modified 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 remainder of the benefit year period of disqualification imposed by the department is within the administrative penalty discretion of the law.

The claimant demonstrated the unknowing nature of his claiming benefits while earning substantial wages by immediately reporting to his employer to check his personal financial records against their records. The claimant had a good track record of working for the same employer, and correctly filing unemployment claims for five years prior to the overpayment. When the claimant learned he had erred, he did not appeal the overpayment decision, and he repaid the overpayment by offset procedure on his September 4, 2005, claim.

While the claimant has offered some mitigating circumstances regarding the department-proposed penalty, the amount of the overpayment and the five-weeks of unreported wages cannot be overlooked. A minimum penalty of one-week of disqualification for each of the five weeks of unreported wages is appropriate in this matter.

DECISION:

The decision of Iowa Workforce Development dated April 19, 2006, reference 02, is MODIFIED in favor of the claimant. The claimant is disqualified from receiving benefits for the five-week period ending May 20, 2006. The claimant is entitled to receive benefits effective May 21, 2006, provided he is otherwise eligible.

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