

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

Appeal Number: 05-IWDUI-0933
OC: 03/06/05
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, 4TH Floor Lucas Building, Des Moines, Iowa 50319.**

ROBERT C BUNNER
PO BOX 12071
DES MOINES IA 50313

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

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)

April 22, 2005

(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 March 24, 2005, reference 01, which disqualified the claimant from receiving benefits for a period from March 20, 2005 to May 14, 2005, due to a prior overpayment based on misrepresentation.

The hearing was held pursuant to due notice on April 19, 2005, by telephone conference call. The claimant participated. Cindy Stroud, Investigator, participated on behalf of Iowa Workforce Development, Investigation and Recovery.

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 December 22, 2003. A representative of Iowa Workforce Development issued a decision that the claimant was over paid benefits \$1,914.74 due to misrepresentation on June 4, 2004. The claimant did not receive the decision in the mail due to the department failing to acknowledge his address of record. However, the claimant learned about the decision when he filed an unemployment claim, and he elected to repay the overpayment rather than file any appeal.

When the claimant filed his most recent claim effective March 6, 2005, a representative of the department notified Investigator Busma. Busma mailed a warning letter to the claimant dated March 18, 2005 about imposing an administrative penalty due to the \$1,914.74 overpayment.

After the claimant conferred with department representative Ecker about his overpayment situation, he went to the administrative office and he submitted a written statement to Investigator Stroud about his understanding of how to file unemployment claims and report his wages. Stroud submitted the statement to Investigator Busma for her consideration.

Busma elected to impose an 8-week penalty on the claimant's recent claim that represented one-week of penalty for each of the eight weeks the claimant incurred the \$1,914.74 overpayment. According to department policy and guidelines, the usual penalty period ranges from a minimum of twenty weeks to the remainder of the benefit year based on the circumstances of this matter. Busma chose a lesser period due to the claimant repaying and satisfying the overpayment.

The claimant does have a history of filing unemployment claims that does include a prior overpayment with a corresponding administrative penalty.

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. While the claimant did not receive the overpayment decision due to an address err, he learned about the overpayment when he filed a further unemployment claim. The claimant chose to repay the overpayment rather than filed any appeal.

The 8 -week period of disqualification imposed by the department is within the administrative penalty discretion of the law. Given the department policy and guideline of imposing a minimum penalty of twenty (20) weeks under comparable circumstances like the claimant's situation, the penalty is light. The claimant was given appropriate credit for having repaid the overpayment, but the department balanced that effort against his history of prior overpayments that included a penalty.

DECISION:

The decision of Iowa Workforce Development dated March 24, 2005, reference 01, is **AFFIRMED**. The claimant is disqualified from receiving benefits for the 8-week period ending May 14, 2005.

rls