

IOWA DEPARTMENT OF INSPECTIONS & APPEALS
Division of Administrative Hearings
Wallace State Office Building – Third Floor
502 East Ninth Street
Des Moines, Iowa 50319-8082

**Appeal Number: 13IWDUI383 and
13IWDUI384**
OC: 07/03/11; 06/23/13
Claimant: Appellant (03), (04); (01)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

MICHAEL J. PORTER
343 BELL
DES MOINES, IA 50315

IRMA LEWIS, IWD

JONI BENSON, IWD

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.

STATE CLEARLY

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.

(Administrative Law Judge)

October 30, 2013
(Dated and Mailed)

Iowa Code section 96.6(2) – Timely appeal
Iowa Code section 96.5(8) – Administrative penalty

STATEMENT OF THE CASE

On August 6, 2013, Claimant/Appellant Michael J. Porter filed an appeal from three decisions: on June 20, 2012, Iowa Workforce Development (IWD) issued a decision (reference 03) establishing and requesting repayment of a claim (\$1,074) for an alleged overpayment of unemployment benefits (UIB) received by Porter from September 25, 2011 to October 29, 2011 because of failure to report earnings; on March 1, 2013, IWD issued a decision (reference 04) withholding Porter's Iowa income tax refund to apply

against the claim; and on July 26, 2013, IWD issued a decision ((reference 01) denying a UIB claim and imposing an administrative penalty from July 21, 2013 to October 12, 2013 because of making false statements regarding employment and earnings in order to receive UIB.

On or about August 9, 2013, IWD transmitted the cases to the Iowa Department of Inspections and Appeals (DIA) to schedule a contested case hearing. When IWD transmitted the cases, it mailed a copy of the administrative file to Porter.

On September 9, 2013, the administrative law judge convened the hearing. Porter participated in the hearing. Irma Lewis, IWD investigator, participated in the hearing. On September 27, 2013, the judge reconvened the hearing. Lewis participated in the reconvened hearing.

The judge admitted the IWD decision letters (3), appeal, decision overpayment worksheet, preliminary audit notice, IWD letter (Jun 06, 12), unsigned agreement to reimburse, crossmatch audit worksheet, wages cross match, notice of fact-finding interview, IWD letter (Jul 11, 13), UIB screens, administrative penalty, and FBG email (Sep 11, 13) into the record.

ISSUES

1. Whether the claimant timely filed the appeals.
2. Whether IWD correctly denied unemployment insurance benefits (UIB) and imposed an administrative penalty because the claimant made false statements regarding employment or earnings.

FINDINGS OF FACT

On July 3, 2011, Porter filed a first claim for UIB. IWD approved Porter's claim and issued the following UIB for the weeks ending on the following dates:

Oct 01, 11	\$340	
Oct 08, 11	\$340	
Oct 15, 11	\$340	
Oct 22, 11	\$340	
Oct 29, 11	\$340	(crossmatch audit worksheet)

On October 14, 2011, Porter's job with employer FB ended. Porter received the following gross earnings that Porter failed timely to report to IWD for the weeks ending on the following dates:

Oct 01, 11	\$615
Oct 08, 11	\$667
Oct 15, 11	\$667
Oct 22, 11	\$ 0

Department's regulations provide that the effective date of the appeal is established by either the postmark on the appeal or the date stamp.

With respect to the establishment of a claim for an alleged overpayment of UIB received by Porter, Porter recalled that in 2011, employer FB erroneously issued gross earnings to Porter that it subsequently recouped. Lewis stated that if employer FB verified that it erroneously issued gross earnings to Porter that it subsequently recouped, then IWD would be willing to recalculate the claim.

On September 11, 2013, employer FB verified that on November 15, 2011, it erroneously issued gross earnings to Porter that it subsequently recouped. Lewis stated that since gross earnings received by Porter on November 15, 2011 were not considered by IWD when it established the claim, IWD would not be adjusting the amount of the claim.

In the case at issue, on June 20, 2012, IWD issued a decision letter stating that Porter received an overpayment (\$1,074) of IWD from September 25, 2011 to October 29, 2011 because of failure to report wages earned from employer FB. Porter failed to appeal the decision on or before July 2, 2012. It is ORDERED that Porter's appeal of the establishment of the claim be denied as untimely.

On March 1, 2013, IWD issued a decision letter withholding Porter's Iowa income tax refund to apply against the claim. Porter failed to appeal the decision on or before March 11, 2013. It is ORDERED that Porter's appeal of the offset of the Iowa income tax refund be denied as untimely.

B. Denial of UIB and imposition of administrative penalty.

An individual shall be disqualified for UIB if IWD 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 any benefits not due under this chapter, willfully and knowingly made a false statement or misrepresentation, or 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. See Iowa Code section 96.5(8).

In the case at issue, for four weeks ending in October 2011, Porter made false statements to IWD by denying that Porter currently was employed and had received gross earnings. Based on a preponderance of evidence, Porter willingly and knowingly made the false statements.

On July 26, 2013, IWD issued a decision letter denying UIB and imposing an administrative penalty because of making false statements regarding employment and earnings. The length (12 weeks) of the proposed penalty does not exceed the time period (6-16 weeks) set forth for 4 weeks of misrepresentation in the Department's regulations. The actions of IWD denying UIB and imposing an administrative penalty

from July 21, 2013 to October 12, 2013 because of making false statements are AFFIRMED. Iowa Code section 96.5(8).

DECISION

The actions of IWD denying UIB and imposing an administrative penalty are AFFIRMED.

CBT