

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

**Appeal Number: 14IWDUI047-048**  
**OC: 12/02/12: 12/15/13**  
**Claimant: Appellant (03): (01)**

**DECISION OF THE ADMINISTRATIVE LAW JUDGE**

**RYAN T. PETTINGER**  
**1537 ARLINGTON AVENUE**  
**DES MOINES, IA 50314**

**IOWA WORKFORCE DEVELOPMENT**  
**INVESTIGATIONS AND RECOVERY**  
**1000 EAST GRAND AVENUE**  
**DES MOINES IA 50319-0209**

JONI BENSON, IWD  
IRMA LEWIS, 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.

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Charles B. Tarvin, Administrative Law Judge

March 27, 2014

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(Dated and Mailed)

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Iowa Code section 96.3-7 – Correctness of Amount Claimed as Overpayment of Benefits  
Iowa Code section 96.5-8 – Administrative penalty  
Iowa Code section 96.16-4 – Misrepresentation  
871 IAC section 25.7(2) – Timeliness of appeal

**STATEMENT OF THE CASE**

On November 22, 2013, Iowa Workforce Development (IWD) issued a decision (03) that Ryan T. Pettinger, claimant and appellant, received an overpayment (\$435.00) of unemployment benefits (UIB) from March 31, 2013 to May 11, 2013 because of failure to report wages from employer QS. On January 15, 2014, Pettinger filed an appeal.

On January 8, 2014, IWD issued a decision (01) imposing an administrative penalty and disqualifying Pettinger from receiving UIB from December 29, 2013 to April 12, 2014 because of making false statements concerning employment and earnings. On January 15, 2014, Pettinger filed the appeal.

On or about January 28, 2014, 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 files to Pettinger.

On February 26, 2014, Administrative Law Judge Charles B. Tarvin convened the hearing. Pettinger participated in the hearing. Irma Lewis, IWD investigator, participated in the hearing. The judge admitted the IWD decisions, appeal letter, decision overpayment worksheet, preliminary audit notice, cross match audit worksheet, wage cross match, and IWD exhibits A-1 – F-2 into the record.

### **ISSUES**

1. Whether the claimant timely appealed the establishment and request for repayment of an alleged overpayment of UIB received due to misrepresentation.
2. Whether IWD correctly imposed an administrative penalty and disqualified the claimant from receiving UIB for 15 weeks.

### **FINDINGS OF FACT**

On December 2, 2012, Pettinger filed a claim for UIB. (exhibit A3)

For the week ending April 6, 2013, Pettinger reported receiving gross earnings (\$50.00) from employer QS, when in fact Pettinger received gross earnings of \$73.00. For the week ending April 13, 2013, Pettinger reported receiving no gross earnings, when in fact Pettinger received gross earnings of \$80.00 from employer QS. For the week ending April 27, 2013, Pettinger reported receiving no gross earnings, when in fact Pettinger received gross earnings of \$347.00 from employer QS. For the week ending May 4, 2013, Pettinger reported receiving no gross earnings, when in fact Pettinger received gross earnings of \$396.00 from employer QS. For the week ending May 11, 2013, Pettinger reported receiving no gross earnings, when in fact Pettinger received gross earnings of \$420.00 from employer QS. (cross match audit worksheet)

From March 31, 2013 to May 11, 2013, Pettinger received an overpayment (\$435) of UIB due to misrepresentation. (cross match audit worksheet)

On December 15, 2013, Pettinger filed a claim for UIB. (Jan 08, 14 decision)

On December 23, 2013, IWD issued a letter to Pettinger informing him that it would be determining whether to assess an administrative penalty for failure correctly to report work and wages from employer QS. Pettinger was given the opportunity to respond by mail by January 2, 2014. (exhibit A-2) Pettinger failed timely to report by mail. (testimony of Lewis)

Pettinger acknowledged that he was “at mistake” for causing the overpayment of UIB and apologized for the mistake. In December 2013, Pettinger contacted IWD regarding the

overpayment and agreed to pay \$70 per month. Pettinger had been unable to make regular payments on the overpayment due to financial hardship. Pettinger had a family to support and requested that the administrative penalty be overturned. (appeal letter)

### **CONCLUSIONS OF LAW**

Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and the worker's family. See Iowa Code section 96.2.

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 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. Any penalties imposed by this subsection shall be in addition to those otherwise prescribed in this chapter. See Iowa Code section 96.5.

A notice of a determination that the claimant received UIB to which the claimant was not entitled shall be promptly given to the affected claimant. Such notice shall be dated and shall advise the claimant as to the benefit weeks involved and shall advise the claimant as to the reason for overpayment and the total amount of said overpayment. Unless the claimant, within ten days after such notification was mailed to the claimant's last-known address, files with the department a written request for review of, or an appeal from, such determination, the determination shall be final. Timeliness shall be determined by postmark within ten calendar days from the date of mailing shown on the decision or be received by the department within ten calendar days from the date of mailing. See 871 IAC section 25.7(2).

When, subsequent to the filing of a valid claim, it has been determined that within the preceding 36 calendar months the claimant failed to report wages earned during a week, such claimant shall forfeit all unemployment insurance benefits for the week in which the determination is made and for a period of not more than such claimant's remaining benefit year. See 871 IAC section 25.9(1).

The administrative penalty recommended for falsification ranges from three weeks through the end of the benefit year. The degree and severity of penalty shall be determined at the discretion of the investigator and shall be based upon the nature of the offense and the facts. See 871 IAC section 25.9(2).

Timeliness of appeal with respect to UIB overpayment.

In the case at issue, on November 22, 2013, Iowa Workforce Development (IWD) issued a decision (03) that Pettinger received an overpayment (\$435.00) of unemployment benefits (UIB) from March 31, 2013 to May 11, 2013 because of failure to report wages from employer QS. On January 15, 2014, Pettinger filed an appeal.

Since Pettinger failed to file his appeal letter on or before December 2, 2013, it is ORDERED that Pettinger's appeal be denied as untimely with respect to the establishment of the UIB overpayment (\$435), the request for repayment of the overpayment, the determination that the overpayment was caused by misrepresentation, and the assessment of a 15% penalty.

Disqualification for failure to report wages earned during a week.

On January 8, 2014, IWD issued a decision (01) imposing an administrative penalty and disqualifying Pettinger from receiving UIB from December 29, 2013 to April 12, 2014 because of making false statements concerning employment and earnings. On January 15, 2014, Pettinger filed the appeal.

For the week ending April 6, 2013, Pettinger reported wages of \$50 from employer QS. Based on a preponderance of evidence, as early as April 13, 2013, Pettinger knew that as a recipient of UIB, he was responsible for reporting wages received each week.

For the weeks ending April 13, 2013, April 27, 2013, May 4, 2013, and May 11, 2013, Pettinger reported receiving no wages, when in fact he received wages each week from employer QS. Contrary to Pettinger's assertion that he "mistakenly" failed to report the wages, Pettinger willfully and knowingly failed to report wages received from employer QS, resulting in Pettinger receiving an overpayment of UIB. Iowa Code section 96.5.

In the case at issue, IWD correctly determined that Pettinger was subject to an administrative penalty resulting in his disqualification from receipt of UIB. The degree and severity of the penalty was at the discretion of the IWD investigator. The action of IWD imposing an administrative penalty and disqualifying Pettinger from receipt of UIB from December 29, 2013 to April 12, 2014 (15 weeks) is AFFIRMED. 871 IAC section 25.9(2).

**DECISION**

IWD's decision dated January 8, 2014, reference 01, is AFFIRMED

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