

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

Appeal Number: 12IWDUI104
OC: 11/27/11
Claimant: Appellant (1)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

**ROBERT E HUTCHINSON
1107 NW CHURCH ST
LEON, IA 50144-1252**

**IOWA WORKFORCE DEVELOPMENT
INVESTIGATIONS AND RECOVERY
IRMA LEWIS, INVESTIGATOR**

JOE WALSH, IWD
CARLA DENNIS, 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)

April 13, 2012

(Dated and Mailed)

Iowa Code section 96.5-8 – Administrative Penalty
Iowa Code section 96.4-3 – Ineligibility for Benefits

STATEMENT OF THE CASE

Claimant/Appellant Franklin Hutchinson filed an appeal from a decision dated February 15, 2012, reference 01, finding he was not eligible to receive unemployment insurance benefits because IWD's records indicated he made false statements concerning his employment and earnings and did so to receive unemployment insurance benefits from April 3, 2012 through April 30, 2011, and imposing an

administrative penalty disqualifying Hutchinson from receiving benefits from February 12, 2012 through May 5, 2012.

IWD transmitted the file to the Iowa Department of Inspections and Appeals on March 9, 2012. When IWD transmitted the file to the Iowa Department of Inspections and Appeals IWD mailed a copy of the administrative file to Hutchinson. On April 13, 2012, a contested case hearing was held before Administrative Law Judge Heather L. Palmer. Hutchinson appeared and testified. Irma Lewis appeared and testified on behalf of IWD. Exhibits 1 through 10 were admitted into the record.

ISSUES

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

Whether the Department correctly determined the claimant is ineligible to receive unemployment insurance benefits.

FINDINGS OF FACT

Hutchinson has received unemployment insurance benefits in the past. IWD conducted an audit of Hutchinson's case and contacted his employer, Norris Asphalt Paving Co. to obtain his wage information. IWD compared the wage information Hutchinson reported to IWD with the information it obtained from his employer. IWD found Hutchinson failed to report and underreported his earnings for the weeks of April 9, 2011 through April 30, 2011. IWD believed Hutchinson received a total overpayment of \$978, due to misrepresentation. IWD requested Hutchinson respond to the potential overpayment by January 18, 2012. IWD did not receive a response from Hutchinson and issued a decision dated January 23, 2012, reference 01, finding he had been overpaid \$978 for the four weeks between April 3, 2011 and April 30, 2011 because he failed to report or incorrectly reported wages from Norris Asphalt Paving Co. IWD concluded the overpayment was due to misrepresentation. Hutchinson did not appeal the overpayment decision.

Hutchinson later applied for unemployment insurance benefits, which generated an inquiry by IWD. Lewis sent Hutchinson a letter on January 30, 2012, stating because he gave false information on his claims IWD would determine whether an administrative penalty should be assessed against him. Lewis explained an administrative penalty is a disqualification from receiving benefits for a specific period of time because false information was given on a prior claim for benefits. Lewis asked Hutchinson to respond by mail concerning imposition of an administrative penalty by February 10, 2012. Hutchinson prepared a response stating he accepted responsibility for "what I had done wrong. I was trying to catch up on my house payments. During the winter we live check to check. Due to me not getting a check I am once again in trouble with my house. I have learned my lesson I feel." (Exhibit 6).

Lewis reviewed the file and Hutchinson's unemployment history. She determined he received a net overpayment in \$105 in 2008, due to underreporting and overreporting his wages in November and December 2007. IWD concluded the overpayment was due to misrepresentation. Hutchinson contested the 2008 decision at hearing, stating he was in Carroll, Iowa and had not received his mail in Leon in time to appeal, but he did not appeal the 2008 decision. Lewis imposed an administrative penalty from February 12, 2012 through May 5, 2012. Hutchinson appealed.

During the hearing Hutchinson admitted he incorrectly reported his income because he was behind on his mortgage payments and he was afraid he would lose his home. Hutchinson is again struggling and fears he will lose his home if IWD's decision is affirmed.

REASONING AND CONCLUSIONS OF LAW

IWD may impose an administrative penalty if an insured person has, within the preceding 36 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 defraud by obtaining benefits the person is not entitled to.¹ The person is disqualified for the week in which IWD makes the determination and forfeits all benefit rights to unemployment insurance benefits for a period of not more than the remaining benefit period as determined by IWD.² The IWD investigator exercises his or her discretion to determine the degree and severity of the penalty, based on the nature of the offense and facts.³

IWD's rules define intent as "the design, resolve, or determination with which an individual or group of individuals acts in order to reach a preconceived objective."⁴ Fraud is defined as "the intentional misuse of facts or truth to obtain or increase unemployment insurance benefits for oneself . . . ; a false representation of a matter of fact, whether by statement or by conduct, by false or misleading statements or allegations; or by the concealment or failure to disclose that which should have been disclosed, which deceives and is intended to deceive another so that they, or [IWD], shall not act upon it to their, or its, legal injury."⁵

The governing statute and rules do not define the terms willfully and knowingly.⁶ Therefore, it is necessary to turn to the rules of statutory and regulatory interpretation. The purpose of statutory interpretation is to determine the true intent of the legislature.⁷ When the legislature has not defined the words of a statute, the Iowa Supreme Court looks to prior decisions of the court, similar statutes, dictionary definitions, and

¹ Iowa Code § 96.5(8).

² *Id.* § 96.5(8).

³ 871 IAC 25.9(2)c.

⁴ *Id.* 25.1.

⁵ *Id.*

⁶ Iowa Code section 96.16(5)b defines knowingly for purposes of the subsection as "having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the requirement or prohibition involved."

⁷ *Bob Zimmerman Ford, Inc. v. Midwest Automotive I, L.L.C.*, 679 N.W.2d 606, 609 (Iowa 2004).

common usage.⁸ The rules of statutory interpretation also govern the interpretation of an administrative agency's rules.⁹ The courts construe administrative rules together, using "common sense and sound reason."¹⁰

Black's Law Dictionary defines knowing as "having or showing awareness or understanding" and "deliberate; conscious."¹¹ Willful is defined as "voluntary and intentional, but not necessarily malicious."¹²

Hutchinson did not report receiving any wages for the weeks ending April 9, 2011, April 23, 2011, and April 30, 2011, and he underreported his wages for the week ending April 16, 2011. The information he provided to IWD was false. Hutchinson admitted he incorrectly reported his wages because he was behind on his mortgage payments and he was afraid of losing his home. I conclude Hutchinson's statements to IWD for the weeks ending April 9, 2011, April 16, 2011, April 23, 2011, and April 30, 2011 were willful and false, and knowingly made to receive benefits he was not entitled to receive. Imposition of an administrative penalty is appropriate.

Lewis imposed an administrative penalty from February 12, 2012 through May 5, 2012. IWD's rules afford the investigator discretion to determine the degree and severity of the penalty, based on the nature of the offense and facts.¹³ I cannot conclude Lewis incorrectly imposed an administrative penalty from February 12, 2012 through May 5, 2012. Because IWD correctly imposed an administrative penalty, Hutchinson is also ineligible to receive unemployment insurance benefits from February 12, 2012 through May 5, 2012.¹⁴ IWD's decision should be affirmed.

DECISION

IWD's decision dated February 15, 2012, reference 01, is AFFIRMED. IWD correctly imposed an administrative penalty disqualifying Hutchinson from receiving unemployment insurance benefits from February 12, 2012 through May 5, 2012.

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⁸ *Id.* at 609 (citing *Bernau v. Iowa Dep't of Transp.*, 580 N.W.2d 757, 761 (Iowa 1998)).

⁹ *Messina v. Iowa Dep't of Job Serv.*, 341 N.W.2d 52, 56 (Iowa 1983).

¹⁰ *Id.*

¹¹ *Black's Law Dictionary* (7th Ed. 1999).

¹² *Id.*

¹³ 871 IAC 25.9(2)c.

¹⁴ Iowa Code § 96.4(3).