

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

Appeal Number: 13IWDUI114
OC: 01/20/13
Claimant: Appellant (1)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

SCOTT NEWMAN
2444 SWE 8TH STREET
DES MOINES, IA 50315-1915

INVESTIGATIONS AND RECOVERY, IWD
IRMA LEWIS, INVESTIGATOR

JOE WALSH, 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)

April 15, 2013

(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 Scott Newman filed an appeal from a decision issued by Iowa Workforce Development (“IWD”) dated February 13, 2013, reference 01, finding he was ineligible to receive unemployment insurance benefits because he made false statements concerning his employment and earnings and did so to receive unemployment

insurance benefits from July 17, 2011 through November 24, 2011. IWD imposed an administrative penalty from February 10, 2013 through August 17, 2013.

IWD transmitted the case to the Department of Inspections and Appeals on March 1, 2013 to schedule a contested case hearing. When IWD transmitted the case, it mailed a copy of the administrative file to Newman. Prior to the hearing Irma Lewis submitted additional documents on behalf of IWD and mailed a copy to Newman.

On April 15, 2013, a contested case hearing was held before Administrative Law Judge Heather L. Palmer. Newman appeared and testified. Lewis appeared and testified on behalf of IWD. Exhibits 1 through 11 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

IWD learned Newman was receiving wages from JC Toland while he was receiving unemployment insurance benefits. Newman underreported his earnings to IWD. For the weeks ending July 23, 2011 through August 6, 2011, Newman reported he received wages of \$60 per week, and his employer reported he received \$384 the first week and \$507 the next two weeks. For the weeks ending August 13, 2011 through August 27, 2011, Newman reported he received wages of \$70 per week and his employer reported he received \$416 the first week, \$455 the second week, and \$480 the third week.

Lewis requested Newman respond to the overpayment by September 23, 2011. Newman did not respond. IWD issued a decision on October 4, 2011, reference 04, finding Newman was overpaid \$1,005.96 for the six weeks between July 17, 2011 and August 27, 2011, due to misrepresentation. Newman did not appeal the decision.

IWD later found Newman was overpaid \$296 for the weeks ending September 17, 2011 and September 24, 2011. Again Newman reported earning \$60 the first week and \$70 the second week. His employer reported Newman earned \$247 the first week and \$120 the second week.

Lewis requested Newman respond to the overpayment by February 14, 2012. Newman did not respond. IWD issued a decision on February 15, 2012, reference 05, finding Newman was overpaid \$296 for the three weeks between August 28, 2011 through September 24, 2011, due to misrepresentation. Newman did not appeal the decision.

Newman requested additional unemployment insurance benefits in 2013. Lewis sent him a letter on February 1, 2013 stating IWD was considering imposing an

administrative penalty against him based on his prior overpayments and requesting Newman provide a response by February 11, 2013. Newman did not respond to Lewis' letter.

On February 13, 2013, IWD issued a decision, reference 01, finding Newman was ineligible to receive unemployment insurance benefits because he made false statements concerning his employment and earnings and did so to receive unemployment insurance benefits from July 17, 2011 through November 24, 2011. IWD imposed an administrative penalty from February 10, 2013 through August 17, 2013.

Lewis testified under IWD's policy, she could have imposed an administrative penalty for the remainder of the benefit year to January 18, 2014. Lewis elected to impose an administrative penalty of three weeks for each week Newman received an overpayment, or a total of 27 weeks.

Newman testified he incorrectly reported his earnings because he was struggling to care for his grandchild. Newman is sorry for his actions and requested leniency.

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

¹ Iowa Code § 96.5(8).

² *Id.* § 96.5(8).

³ 871 IAC 25.9(2)c.

⁴ *Id.* 25.1.

⁵ *Id.*

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 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

Newman acknowledged he received an overpayment and incorrectly reported his earnings when he was caring for his grandchild.

Newman believes an administrative penalty should not be imposed. Lewis testified Newman failed to correctly report his wages for 9 weeks while he requested and received weekly unemployment benefits. Newman did not appeal the overpayment decisions. The information Newman provided to IWD was false. I conclude Newman's statements to IWD each week were willful and false statements knowingly made to receive benefits Newman was not entitled to receive. Imposition of an administrative penalty is appropriate.

Lewis imposed an administrative penalty of three weeks for each week Newman incorrectly reported his wages, or 27 weeks. 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' imposition of an administrative penalty from February 10, 2013 through August 17, 2013 was in error. Because IWD correctly imposed an administrative penalty, Newman is also ineligible to receive unemployment insurance benefits from February 10, 2013 through August 17, 2013.¹⁴ IWD's decision should be affirmed.

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).

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).

DECISION

IWD's decision dated February 13, 2013, reference 01, is AFFIRMED. IWD correctly imposed an administrative penalty disqualifying Newman from receiving unemployment insurance benefits from February 10, 2013 through August 17, 2013.

hlp