

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

Appeal Numbers: 13IWDUI446-447
OC: 10/23/11, 08/11/13
Claimant: Appellant (1)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

ALANZO HAYES
914 FRANKLIN
DES MOINES, IA 50314

IRMA LEWIS, INVESTIGATOR
INVESTIGATIONS AND RECOVERY, IWD

TERESA HILLARY, 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 22, 2013
(Dated and Mailed)

Iowa Code section 96.6-2 – Timeliness of Appeal
Iowa Code section 96.3-7 – Recovery of Overpayment Benefits
Iowa Code section 96.16-4 – Misrepresentation
Iowa Code section 96.5-8 – Administrative Penalty
Iowa Code section 96.4-3 – Ineligibility for Benefits

STATEMENT OF THE CASE

Claimant/Appellant Alanzo Hayes appealed from two decisions issued by Iowa Workforce Development ("IWD") on December 7, 2012, reference 08, with an original claim date of October 23, 2011, and on September 6, 2013, reference 01, with an original claim date of August 11, 2013.

In the decision dated December 7, 2012, reference 08, IWD found Hayes received a \$4,249.38 overpayment, due to misrepresentation, for 18 weeks between April 22, 2012 and August 25, 2012 because he incorrectly reported wages earned with DES Staffing Services.

In the decision dated September 6, 2013, reference 01, IWD imposed an administrative penalty from September 1, 2013 until the end of the benefit year on August 9, 2014, finding Hayes is 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 April 22, 2012 through August 25, 2012.

On September 23, 2013, IWD transmitted the administrative files to the Department of Inspections and Appeals, Division of Administrative Hearings to schedule a contested case hearing. A contested case hearing was scheduled for October 22, 2013.

An administrative appeal hearing was held on October 22, 2013. Hayes did not appear. Hayes' copy of the Notice of Telephone Hearing was not returned as undeliverable mail. Lewis appeared and testified on behalf of IWD. Exhibits 1 through 18 were admitted into the record.

ISSUES

Whether the Claimant filed a timely appeal.

Whether IWD correctly determined that the Claimant was overpaid unemployment benefits and, if so, whether the overpayment was correctly calculated.

Whether IWD correctly determined that the overpayment was the result of misrepresentation.

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

Hayes has received unemployment insurance benefits in the past. IWD received information that Hayes was working while he was receiving unemployment insurance

benefits in 2012. IWD commenced an investigation determined Hayes received an overpayment. IWD issued a decision on December 7, 2012, reference 08, finding Hayes received a \$4,249.38 overpayment, due to misrepresentation, for 18 weeks between April 22, 2012 and August 25, 2012 because he incorrectly reported wages earned with DES Staffing Services. The decision stated “[t]his decision becomes final unless an appeal is postmarked by December 17, 2012, or received by the Iowa Workforce Development Appeal Section by that date.” (Exhibit 8). IWD did not receive an appeal from Hayes by December 17, 2012.

Lewis marked Hayes’ file with IWD for a possible administrative penalty in the future. Lewis noted Hayes had two prior overpayments due to misrepresentation, in 2009 and 2012. In 2009 he entered a repayment agreement with IWD. When he did not make his payments, IWD pursued criminal charges against Hayes. Hayes was convicted of fraudulent practices in the third degree.

Hayes reapplied for unemployment benefits in 2013. Lewis sent Hayes a letter on August 22, 2013 stating IWD was considering imposing an administrative penalty against him and requested Hayes provide a response by September 3, 2013. Hayes did not respond.

IWD issued a decision dated September 6, 2013, reference 01, imposing an administrative penalty from September 1, 2013 until the end of the benefit year on August 9, 2014, and finding Hayes is 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 April 22, 2012 through August 25, 2012. Hayes timely appealed the decision.

Lewis determined an administrative penalty should be imposed against Hayes because he had two separate overpayments due to misrepresentation. The last overpayment from 2012 was for 18 weeks. Lewis testified IWD follows a practice of imposing an administrative penalty for the remainder of a benefit year when the claimant has received overpayments due to misrepresentation for nine weeks or more. Hayes received overpayments exceeding nine weeks. Lewis imposed an administrative penalty through the end of the benefit year.

REASONING AND CONCLUSIONS OF LAW

I. Timeliness of Appeal

Iowa Code section 96.6(2) requires a claimant to file an appeal of a representative’s decision “within ten calendar days after notification was mailed to the claimant’s last known address.” The Iowa Supreme Court has determined that timely appeal is both mandatory and jurisdictional.¹

¹ *Beardslee v. Iowa Dep’t of Job Serv.*, 276 N.W.2d 373, 377 (Iowa 1979).

On December 7, 2012, IWD issued a decision, reference 08, finding Hayes had been overpaid \$4,249.38 for 18 weeks between April 22, 2012 and August 25, 2012 because he incorrectly reported wages earned with DES Staffing Services. IWD found the overpayment was due to misrepresentation. The decision stated “[t]his decision becomes final unless an appeal is postmarked by December 17, 2012, or received by the Iowa Workforce Development Appeal Section by that date.” (Exhibit 8). IWD did not receive an appeal from Hayes by December 17, 2012. Hayes’ appeal was untimely. Hayes did not attend the hearing to state why he filed an untimely appeal.

II. Administrative Penalty and Ineligibility for Benefits

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.² 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.³ 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.⁴

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.”⁵ 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.”⁶

The governing statute and rules do not define the terms willfully and knowingly.⁷ 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.⁸ 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.⁹ The rules of statutory interpretation also govern the

² Iowa Code § 96.5(8).

³ *Id.* § 96.5(8).

⁴ 871 IAC 25.9(2)c.

⁵ *Id.* 25.1.

⁶ *Id.*

⁷ 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.”

⁸ *Bob Zimmerman Ford, Inc. v. Midwest Automotive I, L.L.C.*, 679 N.W.2d 606, 609 (Iowa 2004).

⁹ *Id.* at 609 (citing *Bernau v. Iowa Dep’t of Transp.*, 580 N.W.2d 757, 761 (Iowa 1998)).

interpretation of an administrative agency's rules.¹⁰ The courts construe administrative rules together, using "common sense and sound reason."¹¹

Black's Law Dictionary defines knowing as "having or showing awareness or understanding" and "deliberate; conscious."¹² Willful is defined as "voluntary and intentional, but not necessarily malicious."¹³

Hayes has received two overpayments in the past. Within the past thirty-six months he has received more than nine weeks of overpayments. Hayes did not timely appeal the overpayment determination. Imposition of an administrative penalty is appropriate in this case.

Lewis issued the decision dated September 6, 2013, reference 01, imposing an administrative penalty for the remainder of the benefit year. Lewis testified IWD follows a practice of imposing an administrative penalty for the remainder of the benefit year when an overpayment occurs for nine weeks or more. Hayes received overpayments exceeding nine 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.¹⁴ I cannot conclude Lewis's imposition of an administrative penalty from September 1, 2013 through the end of the benefit year on August 9, 2014 is improper. Because IWD correctly imposed an administrative penalty, Hayes is also ineligible to receive unemployment insurance benefits from September 1, 2013 through August 9, 2014.¹⁵ IWD's decision should be affirmed.

DECISION

Hayes failed to timely appeal IWD's decision dated December 7, 2012, reference 08, finding he received an overpayment of \$4,249.38, due to misrepresentation. IWD's decision is affirmed. IWD's decision dated September 6, 2013, reference 01, finding Hayes is ineligible to receive unemployment insurance benefits and imposing an administrative penalty from September 1, 2013 through August 9, 2014 is also affirmed.

hlp

¹⁰ *Messina v. Iowa Dep't of Job Serv.*, 341 N.W.2d 52, 56 (Iowa 1983).

¹¹ *Id.*

¹² *Black's Law Dictionary* (7th Ed. 1999).

¹³ *Id.*

¹⁴ 871 IAC 25.9(2)c.

¹⁵ Iowa Code § 96.4(3).