

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

Appeal Number: 09-IWDUI-181
OC: 5/17/09
Claimant: Appellant (1)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

ABRAHAM ELAM
14040 HIGHWAY 16
DOUDS, IA 52551

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

DAN ANDERSON, 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.

Jean M. Davis

(Administrative Law Judge)

September 30, 2009

(Dated and Mailed)

Iowa Code section 96.5-8 – Administrative Penalty

STATEMENT OF THE CASE

Abraham Elam filed a timely appeal from a decision issued by Iowa Workforce Development (the Department) dated July 31, 2009, reference 01. In this decision, the Department disqualified Mr. Elam from receiving benefits from July 26, 2009 through August 22, 2009. The Department's decision stated that the penalty was a result of false statements made by Mr. Elam concerning employment and earnings from July 30, 2006 through September 23, 2006.

The case was transmitted from Workforce Development to the Department of Inspections

and Appeals on August 26, 2009 for scheduling of a contested case hearing. A Notice of Telephone Hearing was mailed to all parties on August 27, 2009. On September 8, 2009, a telephone appeal hearing was held before Administrative Law Judge Jean M. Davis. Investigator Karen Von Behran represented the Department and presented testimony. The Appellant Abraham Elam failed to appear for the hearing. The administrative transmittal, including the investigative documents prepared by Ms. Von Behran and the letter of appeal filed by the Appellant were admitted into the record as evidence.

ISSUE

Whether the Department correctly imposed an administrative penalty because of false statements made by the claimant.

FINDINGS OF FACT

The Department made previous findings assessing an overpayment regarding Abraham Elam. In March 2007, the Department determined that Mr. Elam was overpaid a net overpayment of \$1,251.00 due to his incorrect reporting of wages. Mr. Elam did not appeal this decision.

In May 2009, Mr. Elam commenced a new claim for benefits. This claim triggered an audit regarding the previously assessed but unpaid overpayment to determine if the overpayment resulted from false statements made by the claimant. Ms. Von Behren conducted the investigation on behalf of the Department.

As part of her investigation Ms. Von Behren reviewed the prior the Appellant's earnings from Ideal Ready Mix during the time period of the assessed overpayment. In addition, she viewed the weekly earned income reports filed by the Appellant using the Department's automated telephone filing system for the same period. Ms. Von Behren determined that for the time period for which he had earned income from Ideal Ready Mix, the Appellant reported on the automated telephone system that he had not worked and that he did not have earnings to report. On each occasion, the Appellant failed to disclose that he was working and failed to disclose the amounts of his earnings.

As part of her investigation, Ms. Von Behran also contacted the Appellant on July 30, 2009 to determine his explanation for the reporting omissions. The Appellant first stated that he did not report his earnings because he thought the reporting was for the week prior to the week for which the claim is made. When asked about the subsequent weeks for which he had earned income, the Appellant stated that he reported the information regarding his earned income when he called in his weekly report. The Appellant also stated that he received an earlier inquiry from the Department regarding his work at Ideal Ready Mix but did not respond to it due to family issues and his military commitments.

To complete her investigation, Ms. Von Behren reviewed the Department's records of the Appellant's claims for benefits during the four week period for which he was assessed an overpayment in 2007. In each of the weeks, the Appellant reported that he had no employment and in each of the weeks the Appellant stated that he had not received earned income.

REASONING AND CONCLUSIONS OF LAW

The Department is authorized to impose an administrative penalty when it determines that an individual has, within the thirty-six preceding 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 obtain unemployment benefits to which the individual is not entitled.¹ The imposition of an administrative penalty results in the forfeiting of all unemployment benefits for a period of time to be determined by the Department; the period, however, cannot exceed the remainder of the individual's benefit year.²

The Department's investigator considers the facts and nature of the offense in determining the degree and severity of the penalty. The penalty range for falsification is from three weeks through the remainder of the benefit year. The investigator has broad discretion to determine the actual penalty to be imposed within the range.³

The evidence of record establishes that the Appellant made false statements to obtain unemployment benefits to which he was not entitled. In addition, the Department determined that the Appellant was overpaid in benefits during a prior claim for benefits. The Appellant did not appeal that determination. Ms. Von Behren investigated the circumstances of the overpayment when a second claim for benefits was made in 2009. Her investigation included a review of the benefits paid to the Appellant, the earned income he received during his benefits period and the statements he filed each week during his benefit period on which benefits were paid. The Department's records establish that the Appellant failed to provide accurate information to the Department and failed to report work activity and earned income. Given the facts and circumstances present here, the Department's decision to impose an administrative penalty for a period of four weeks was within its discretion and must be affirmed.

DECISION

Iowa Workforce Development's decision dated July 31, 2009, reference 1 is AFFIRMED. Abraham Elam is disqualified from receiving benefits from July 26, 2009 until August 22, 2009.

jmd

¹ Iowa Code § 96.5(8).

² *Id.*

³ 871 Iowa Administrative Code (IAC) 25.9(2).