

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

Appeal Number: 06-IWDUI-012
OC: 11/27/05
Claimant: Appellant (4)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

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.**

WILLIAM N HOSKINS
3313 SW SEVENTH STREET
DES MOINES IA 50315

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

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

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.

DAN ANDERSON, IWD

(Administrative Law Judge)

February 10, 2006

(Decision Dated & Mailed)

Section 96.4-3 - Able and Available
Section 96.5-8 - Administrative Penalty
871 IAC 25.9(2) - Penalties

STATEMENT OF THE CASE:

The claimant filed an appeal from an Iowa Workforce Development Department decision dated December 29, 2005, reference 01, which disqualified the claimant from receiving benefits for a period from December 25, 2005 to April 8, 2006, due to a prior overpayment based on misrepresentation.

The hearing was held pursuant to due notice on February 7, 2006, by telephone conference call. The claimant participated. Irma Lewis, Investigator, participated on behalf of Iowa Workforce Development, Investigation and Recovery.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses, and having considered all of the evidence in the record, finds: The claimant was the subject of an audit and investigation on his claim for benefits effective November 23, 2003, and November 28, 2004. A representative of Iowa Workforce Development issued a decision that the claimant was over paid benefits \$246.00 due to misrepresentation on March 17, 2005, and a further decision that the claimant was overpaid benefits \$704 due to misrepresentation dated May 23, 2005. The decisions were not appealed, and they have now become final.

When the claimant filed his most recent claim effective November 27, 2005, a department representative notified Investigator Lewis. Lewis mailed a letter to the claimant dated December 12, 2005 regarding the overpayments totaling \$950, and she warned him about the administrative penalty situation.

The claimant did not respond directly to Investigator Lewis, but he did contact a department representative about the repayment of the overpayment. The claimant learned that the department had offset his benefit entitlement for several weeks with an adjustment/credit that satisfied the overpayment. The claimant did not respond to the warning letter, as he believed the overpayment issue had been resolved.

Lewis reviewed a department policy guideline of imposing a penalty period ranging from eight-weeks to the remainder of a benefit year when considering the overpayment offenses. The \$950 overpayment represents five-weeks of unreported wages. Lewis elected a penalty period of fifteen-weeks that represents three weeks of disqualification for each of the five weeks the claimant incurred the overpayment. Lewis considered that the claimant had not made any direct payments on the overpayment as a consideration for the penalty period.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the claimant is able and available for work.

Iowa Code Section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work.

The further issue is whether the administrative penalty imposed is correct.

Iowa Code Section 96.5-8 provides:

8. Administrative Penalty. 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 benefits not due under this chapter, 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.

871 IAC 25.9(2) provides:

b. The general guide for disqualifications for deliberate falsification for the purpose of obtaining or increasing unemployment insurance benefits is listed below. It is intended to be used as a guide only and is not a substitute for the personal subjective judgment of the investigator because each case must be decided on its own merits. The administrative penalty recommended for falsification ranges from three weeks through the end of the benefit year.

The administrative law judge concludes that the administrative penalty imposed by the department should be modified pursuant to Iowa Code Section 96.4-3 and Iowa Code Section 96.5-8. The claimant was the subject of an overpayment decision due to misrepresentation within the time period established by the law, which was not appealed, and it has now become final. The 15-week period of disqualification imposed by the department is within the administrative penalty discretion of the law.

The department investigator testified that one of the circumstances she relied upon in imposing the penalty period was the failure of the claimant to repay the \$950 overpayment. While the claimant did not make payments, he did contact a department representative prior to the issuance of the decision about making an arrangement to repay. When the claimant learned the department had offset some weekly benefits that satisfied the overpayment, he assumed the issue had been resolved.

The satisfaction of the overpayment and the claimant readily admitting his fault are circumstances that should be considered in reducing the penalty to the department minimum of eight weeks.

DECISION:

The decision of Iowa Workforce Development dated December 29, 2005, reference 01, is MODIFIED in favor of the claimant. The claimant is disqualified from receiving benefits for the 8-week period ending February 18, 2006. The claimant is entitled to receive benefits effective February 19, 2006, provided he is otherwise eligible.

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