

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

Appeal Number: 13IWDUI473-474
OC: 8/07/11 and 08/18/13
Claimant: Appellant (1)

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 Notice of Appeal, directly to the **Employment Appeal Board, 4TH Floor Lucas Building, Des Moines, Iowa 50319.**

CYNTHIA JANSSENS
4200 PARK AVENUE APT B6-4
DES MOINES, IA 50321-3416

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.

IOWA WORKFORCE DEVELOPMENT
INVESTIGATIONS AND RECOVERY
430 E GRAND
DES MOINES IA 50309

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.

IRMA LEWIS, IWD
JONI BENSON, IWD

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)

November 18, 2013

(Decision Dated & Mailed)

Iowa Code § 96.3(7) – Recovery of Overpayment Benefits
Iowa Code § 96.4(3) – Whether Claimant was Eligible to Receive Benefits
Iowa Code § 96.5(8) – Whether IWD Correctly Imposed an Administrative Penalty
Iowa Code § 96.6(2) – Whether Claimant Filed a Timely Appeal
Iowa Code § 96.16(4) – Misrepresentation

STATEMENT OF THE CASE

There are two decisions issued by Iowa Workforce Development (IWD) at issue here. The first decision was issued March 21, 2013 (reference 12), and informed the Claimant, Cynthia Janssens, that IWD determines that she was overpaid \$1595 between July 1, 2012 and August 4, 2012. There is no indication in the file that Ms. Janssens appealed from the decision of March 21, 2013.

Ms. Janssens filed an appeal received by IWD September 25, 2013 from a decision issued by Iowa Workforce Development (IWD) dated September 17 (reference 01). This decision

informed Ms. Janssens that IWD had determined that she had made false statements concerning her employment and earnings, resulting in the earlier overpayment of \$1595¹. Consequently, IWD imposed an administrative penalty disqualifying her from receiving benefits from September 8, 2013 until December 21, 2013, a period of 15 weeks.

These cases were transmitted from IWD to the Department of Inspections and Appeals on October 7 to schedule a contested case hearing. A Notice of Telephone Hearing was mailed to all parties setting a hearing date of November 18 at 8:00 a.m. Ms. Janssens failed to appear, although the notices to her were not returned as undeliverable. Irma Lewis appeared and testified for IWD. Administrative notice was taken of documents in the files, which are referred to more specifically herein.

ISSUES

Five issues were asserted by IWD on appeal: 1) whether the Claimant submitted a timely appeal from the March 21, 2013 decision; 2) whether IWD correctly determined that the Claimant was overpaid unemployment benefits, and if so, whether the amount of overpayment was correctly calculated; 3) whether IWD correctly determined the overpayment was a result of misrepresentation; 4) whether IWD correctly determined the Claimant is ineligible to receive unemployment benefits; and 5) whether IWD correctly imposed an administrative penalty.

FINDINGS OF FACT

On March 7, 2013 IWD mailed a preliminary audit notice to Ms. Janssens, who had been receiving unemployment benefits pursuant to a claim she filed on August 7, 2011. The audit notice informed Ms. Janssens of a potential overpayment of unemployment benefits in the amount of \$1595 because Ms. Janssens failed to report wages paid to her from HS Medical Billing Services, Inc. for the period July 1 through August 4, 2012. Ms. Janssens did not respond to the audit notice. On March 21, 2013 IWD sent a decision to Ms. Janssens informing her that she was deemed overpaid \$1595 for that five week period in the summer of 2012. The decision also informed her that the amount of \$1595 would have to be repaid before she was eligible for benefits again. There is no indication in the file that Ms. Janssens appealed from the decision of March 21, 2013.

On August 8, 2013 Ms. Janssens filed a second claim for unemployment insurance benefits. By letter dated September 3, 2013 Ms. Lewis informed Ms. Janssens, "Because you gave false information on your claims, Iowa Workforce Development will make a determination regarding the assessment of an Administrative Penalty on your current unemployment insurance claim. An Administrative Penalty is a disqualification from receiving benefits for a specific period of time because false information was given on prior claims for benefits."

Ms. Janssens responded to this letter on September 13, 2013, asserting, "I was not getting paid. I was under the impression that I was to keep filing unemployment till [sic] I accepted job and was getting paid." The employer in question, HS Medical Billing Services, Inc., had previously responded to a questionnaire from IWD, showing that Ms. Janssens had been paid for the five weeks between July 1 and August 4, 2012. For each of those weeks, Ms. Janssens filed a claim for unemployment benefits, certifying that she received no wages for the weeks in question.

In a decision dated September 25, 2013, IWD informed Ms. Janssens that it was imposing an administrative penalty because of her false certifications. The penalty imposed disqualified her

¹ Because of offsets already made by IWD, the amount of the overpayment is now \$671.

from receiving unemployment benefits for 15 weeks, from September 8 until December 21, 2013. IWD guidelines for the length of the penalty for a claimant who files false claims over five weeks is 8 – 20 weeks. Ms. Lewis testified that IWD acknowledged this is Ms. Janssens first time to make false statements to the agency, so it decided on three weeks per each of the five misrepresentations, thus the 15 week penalty.

REASONING AND CONCLUSIONS OF LAW

It must first be determined whether Ms. Janssens filed a timely appeal from the March 21, 2013 decision of IWD. Iowa Code § 96.6(2) requires that an appeal of an IWD representative's decision must be filed by a claimant or other interested party "after notification or 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. *Beardslee v. Iowa Dept. of Job Services*, 276 N.W.2d 373, 377 (Iowa 1979).

From Ms. Janssens' letter to IWD of September 13 and her appeal letter of September 24, it is clear she did not intent to appeal from the March 21 decision. She referred in both letters to attempting to make arrangements to repay the overpayment. It is clear that she intended only to appeal from the September 17 decision. Accordingly, it is only necessary to address two remaining issues, whether IWD correctly determined the overpayment was a result of misrepresentation and whether IWD correctly imposed an administrative penalty.

The evidence shows that HS Medical Billing Services paid Ms. Janssens for the five week period from July 1 – August 4, 2012, and that she maintained she was not paid for that time period. IWD has shown that the overpayment to Ms. Janssens resulted solely from her misrepresentations.

As to the proper length of penalty, because Ms. Janssens did not bother to appear at this hearing, the undersigned sees no reason to second-guess the length of the penalty imposed by IWD.

DECISION

For the foregoing reasons, IWD's decision dated September 17, 2013 is **AFFIRMED**. There is no timely appeal of the IWD decision dated March 21, 2013. IWD shall take any action necessary to implement this decision.

CJG