

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

MERLA J TEGELER

Claimant

and

IWD INVESTIGATION & RECOVERY

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HEARING NUMBER: 16B-IWDUI-319

**EMPLOYMENT APPEAL BOARD
DECISION**

SECTION: 10A.601 Employment Appeal Board Review

D E C I S I O N

FINDINGS OF FACT:

A hearing in the above matter was held November 9, 2015. The administrative law judge's decision was issued November 23, 2015. The administrative law judge's decision has been appealed to the Employment Appeal Board. The Board finds that the decision below failed to address issues critical to an accurate resolution of this case.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 10A.601(4) (2016) provides:

5. Appeal board review. The appeal board may on its own motion affirm, modify, or set aside any decision of an administrative law judge on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it. The appeal board shall permit such further appeal by any of the parties interested in a decision of an administrative law judge and by the representative whose decision has been overruled or modified by the administrative law judge. The appeal board shall review the case pursuant to rules adopted by the appeal board. The appeal board shall promptly notify the interested parties of its findings and decision.

Pursuant to this authority we review this case and determine to remand it for further proceedings consistent with this decision.

The decision below treated the May 1, 2014 claims decision as binding on the determination of a penalty under Iowa Code §95.5(8). The problem now is two-fold. First, and most important we have reversed the finding that the appeal from the May 1, 2014 determination was untimely. This being the case, that decision can no longer be treated as binding. Second, it is not clear that the standards under §95.5(8) are identical to the prerequisites to imposing a penalty under Code §96.16(4)(b). Perhaps this is so, but a better way of proceeding would be simply to apply the standards of Code §96.5(8) to the facts of the case and to reach an independent conclusion.

We note that this Claimant's penalty under the May 1, 2014 decision states "you are overpaid \$3459.00 between 03/31/13 and 06/29/13" and further states that a 15% penalty will be added to this amount under Iowa Code §96.16(4)(b). But as pointed out by the Claimant's counsel 85 G.A. Chapter 3 added this 15% penalty and states in Section 4 of the bill: "The section of this Act amending section 96.16, subsection 4, providing a penalty relating to fraudulent overpayment, applies to any fraudulent overpayment issued on or after July 1, 2013." All the allegedly fraudulent overpayments here predate the coverage of this 15% enhancement. We thus expect that a voiding of this 15% penalty will follow even if the Administrative Law Judge concludes that the overpayment itself was correctly imposed. We note, however, that the administrative penalty under Iowa Code §96.5(8) would still have to be determined as the lack of a §96.16(4)(b) penalty does not preclude a §96.5(8) penalty. We express no opinion on whether either penalty is warranted, but remark only that if the Administrative Law Judge finds the §96.16(4)(b) penalty is unavailable as a technical legal matter, the Administrative Law Judge should still address the 96.5(8) issue. Naturally if the Administrative Law Judge finds that the overpayment was improperly imposed, no issue of either penalty arises.

DECISION:

The decision of the administrative law judge is not vacated at this time, and remains in force unless and until the Administrative Law Judge makes a differing determination pursuant to this remand. This matter is remanded to an administrative law judge in the Department of Inspections and Appeals. The administrative law judge shall issue a decision on the merits of this case. The Administrative Law Judge may in the Administrative Law Judge's discretion conduct an additional hearing if the judge deems it necessary to develop issues that were not adequately addressed in the first hearing. After the hearing, if any, the administrative law judge shall issue a decision that provides the parties appeal rights.

Kim D. Schmett

Ashley R. Koopmans

James M. Strohman