

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

Appeal Number: 06-IWDUI-173
OC: 07/02/06
Claimant: Appellant (2)

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.**

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.

CHARLES L FLOWERS
700 EAST FIFTH STREET APT #404
DES MOINES IA 50309-5425

STATE CLEARLY

INVESTIGATIONS 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)

August 25, 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 July 24, 2006, reference 01, which disqualified the claimant from receiving benefits for a period from July 2, 2006 to November 18, 2006, due to a prior overpayment based on misrepresentation.

The hearing was held pursuant to due notice on August 21, 2006, by telephone conference call. The claimant participated. Irma Lewis, an Investigator, participated on behalf of Iowa Workforce Development, Investigations 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 October 27, 2002. A representative of Iowa Workforce Development issued a decision that the claimant was over paid benefits \$345.00 due to misrepresentation on September 9, 2003, and a department decision dated December 22, 2003 regarding a misrepresentation/overpayment of \$484. The decisions were not appealed, and they have now become final.

When the claimant filed his most recent claim effective July 2, 2006, a department representative notified Investigator Lewis. Lewis wrote a warning letter to the claimant dated July 11, 2006 advising him that the department was considering a penalty regarding his prior overpayment(s). The claimant responded with an interview on July 14, and he advised Lewis that he could not recall the overpayment. The claimant believed that he didn't receive any overpayments statement, because of address changes.

Lewis noted a department policy of imposing a penalty period for the remainder of the benefit year when a claimant has nine or more weeks of unreported wages involving an overpayment. The claimant had ten-weeks of unreported wages in this matter (though nine resulted in an overpayment), and he failed to make any repayment of the outstanding \$829 overpayment. The department did offset a benefit entitlement that reduced the overpayment balance to \$779.

Lewis imposed a penalty of two-weeks of disqualification for each of the ten-weeks of unreported wages for a total of twenty (20) weeks. The claimant requested consideration of a reduced penalty in this matter.

The most recent week involving the \$829 overpayment is the week ending July 5, 2003.

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 reversed pursuant to Iowa Code Section 96.4-3 and Iowa Code Section 96.5-8. The claimant was the subject of overpayment decision(s) due to misrepresentation that are NOT within the time period established by the law due to the 36-month calendar requirement of 96.5-8.

The claimant filed his most recent claim effective July 2, 2006. The last week of the audit review that lead to the \$829 overpayment is the week ending July 5, 2003. Effectively, 36 calendar months have passed from the last week of the misrepresentation/overpayment to the effective date of the claim.

While the department may not impose a penalty, the repayment of the \$779 overpayment is required prior to the claimant receiving any current benefit.

DECISION:

The decision of Iowa Workforce Development dated July 24, 2006, reference 01, is REVERSED. The claimant is NOT disqualified from receiving benefits effective July 2, 2006, as the administrative penalty is SET ASIDE. The claimant is entitled to receive benefits, provided he is otherwise eligible.

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