

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

**Appeal Number:** 11IWDUI151  
**OC:** 09/21/08, 10/24/10  
**Claimant:** Appellant (1)

**DECISION OF THE ADMINISTRATIVE LAW JUDGE**

**SARA BISHOP**  
**2116 MAISH COURT**  
**DES MOINES, IA 50320-2315**

**INVESTIGATIONS AND RECOVERY, IWD**  
**150 DES MOINES ST.**  
**DES MOINES, IA 50309**

JOE WALSH, 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.

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(Administrative Law Judge)

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July 29, 2011

(Dated and Mailed)

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Iowa Code section 96.5-8 – Administrative Penalty  
Iowa Code section 96.4-3 – Ineligibility for Benefits

**STATEMENT OF THE CASE**

Claimant Sara Bishop filed an appeal from two decisions issued by Iowa Workforce Development (“IWD”) on March 23, 2011, reference 04, and March 25, 2011, reference 05. In reference 04, IWD found Bishop was ineligible to receive unemployment insurance benefits because she made false statements concerning his employment and earnings and did so to receive unemployment insurance benefits from July 4, 2010

through August 21, 2010. IWD imposed an administrative penalty from March 20, 2011 through June 25, 2011. In reference 05, IWD found Bishop was ineligible to receive unemployment insurance benefits because she made false statements concerning his employment and earnings and did so to receive unemployment insurance benefits from July 4, 2010 through August 21, 2010. IWD imposed an administrative penalty from March 20, 2011 through June 25, 2011. Two decisions were issued because the claim affected two separate claim dates, September 21, 2008 and October 24, 2010.

When IWD transmitted the file to the Iowa Department of Inspections and Appeals IWD mailed a copy of the administrative file to Bishop. On July 27, 2011, a telephone hearing was held before Administrative Law Judge Heather L. Palmer. Bishop did not appear as directed by the Notice of Telephone Hearing. Bishop's copy of the Notice of Telephone Hearing has not been returned to my office as undeliverable mail. I waited five minutes before proceeding with the hearing to accommodate a late call from Bishop. She did not appear. Irma Lewis appeared and testified on behalf of IWD. Exhibits 1 through 8 were admitted into the record.

### **ISSUES**

Whether the Department correctly imposed an administrative penalty on the basis of false statements made by the Claimant.

Whether the Department correctly determined the claimant is ineligible to receive unemployment insurance benefits.

### **FINDINGS OF FACT**

IWD issued a decision on March 8, 2011, finding Bishop had been overpaid \$1,202 in unemployment insurance benefits because she failed to report or incorrectly reported wages from Robert Half Corporation between July 4, 2010 and August 21, 2010. IWD determined the overpayment was due to misrepresentation. IWD flagged Bishop's case for imposition of an administrative penalty in the future.

Bishop later applied for unemployment insurance benefits, which generated an inquiry by IWD. Lewis sent Bishop a letter on March 10, 2011 stating that because she gave false information concerning a prior unemployment insurance claim, IWD would determine an administrative penalty should be imposed on her current unemployment insurance claim. Lewis explained an administrative penalty is a disqualification from receiving benefits for a specific period of time because of false information given on prior unemployment insurance claims. The letter referenced Bishop's failure to correctly report her earnings from Robert Half. The letter stated Bishop had until 3:30 p.m. on March 21, 2011 to respond why she failed to correctly report her wages from her employment. Lewis did not receive a response from Bishop.

Lewis reviewed Bishop's unemployment claim history. She determined Bishop failed to correctly report her earnings for seven weeks and had a single overpayment due to

misrepresentation. Lewis imposed an administrative penalty from March 20, 2011 through June 25, 2011.

### REASONING AND CONCLUSIONS OF LAW

IWD may impose an administrative penalty if an insured person has, within the preceding 36 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 defraud by obtaining benefits the person is not entitled to.<sup>1</sup> The person is disqualified for the week in which IWD makes the determination and forfeits all benefit rights to unemployment insurance benefits for a period of not more than the remaining benefit period as determined by IWD.<sup>2</sup> The IWD investigator exercises his or her discretion to determine the degree and severity of the penalty, based on the nature of the offense and facts.<sup>3</sup>

IWD's rules define intent as "the design, resolve, or determination with which an individual or group of individuals acts in order to reach a preconceived objective."<sup>4</sup> Fraud is defined as "the intentional misuse of facts or truth to obtain or increase unemployment insurance benefits for oneself . . . ; a false representation of a matter of fact, whether by statement or by conduct, by false or misleading statements or allegations; or by the concealment or failure to disclose that which should have been disclosed, which deceives and is intended to deceive another so that they, or [IWD], shall not act upon it to their, or its, legal injury."<sup>5</sup>

The governing statute and rules do not define the terms willfully and knowingly.<sup>6</sup> Therefore, it is necessary to turn to the rules of statutory and regulatory interpretation. The purpose of statutory interpretation is to determine the true intent of the legislature.<sup>7</sup> When the legislature has not defined the words of a statute, the Iowa Supreme Court looks to prior decisions of the court, similar statutes, dictionary definitions, and common usage.<sup>8</sup> The rules of statutory interpretation also govern the interpretation of an administrative agency's rules.<sup>9</sup> The courts construe administrative rules together, using "common sense and sound reason."<sup>10</sup>

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<sup>1</sup> Iowa Code § 96.5(8).

<sup>2</sup> *Id.* § 96.5(8).

<sup>3</sup> 871 IAC 25.9(2)c.

<sup>4</sup> *Id.* 25.1.

<sup>5</sup> *Id.*

<sup>6</sup> Iowa Code section 96.16(5)b defines knowingly for purposes of the subsection as "having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the requirement or prohibition involved."

<sup>7</sup> *Bob Zimmerman Ford, Inc. v. Midwest Automotive I, L.L.C.*, 679 N.W.2d 606, 609 (Iowa 2004).

<sup>8</sup> *Id.* at 609 (citing *Bernau v. Iowa Dep't of Transp.*, 580 N.W.2d 757, 761 (Iowa 1998)).

<sup>9</sup> *Messina v. Iowa Dep't of Job Serv.*, 341 N.W.2d 52, 56 (Iowa 1983).

<sup>10</sup> *Id.*

Black's Law Dictionary defines knowing as "having or showing awareness or understanding" and "deliberate; conscious."<sup>11</sup> Willful is defined as "voluntary and intentional, but not necessarily malicious."<sup>12</sup>

Bishop incorrectly reported her earnings from July 4, 2010 through August 21, 2010. She did not appear at hearing to explain why she failed to correctly report her earnings. I conclude Bishop's statements to IWD each week between July 4, 2010 and August 21, 2010, were willful and false statements knowingly made to receive benefits she was not entitled to receive. Imposition of an administrative penalty is appropriate.

Lewis imposed a penalty of two weeks for each week Bishop incorrectly reported her earnings. IWD's rules afford the investigator discretion to determine the degree and severity of the penalty, based on the nature of the offense and facts.<sup>13</sup> I cannot conclude Lewis incorrectly imposed an administrative penalty from March 20, 2011 through June 25, 2011. Because IWD correctly imposed an administrative penalty, Bishop is also ineligible to receive unemployment insurance benefits from March 20, 2011 through June 25, 2011.<sup>14</sup> IWD's decision should be affirmed.

### DECISION

IWD's decisions dated March 23, 2011, reference 04 and March 25, 2011, reference 05, are AFFIRMED. IWD correctly imposed an administrative penalty disqualifying Bishop from receiving unemployment insurance benefits from March 20, 2011 through June 25, 2011.

hlp

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<sup>11</sup> *Black's Law Dictionary* (7th Ed. 1999).

<sup>12</sup> *Id.*

<sup>13</sup> 871 IAC 25.9(2)c.

<sup>14</sup> Iowa Code § 96.4(3).