

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

DECISION OF THE ADMINISTRATIVE LAW JUDGE

ANDREW RICE
504 – 11th COURT SE
BONDURANT, IA 50035-2049

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

JOE WALSH, IWD
DONNELL ANDERSON, IWD
IRMA LEWIS, IWD

Appeal Number: 12IWDUI586
OC: 09/23/12
Claimant: Appellant (1)

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.

(Administrative Law Judge)

December 20, 2012

(Decision Dated & Mailed)

Section 96.5-8 - Administrative Penalty
871 IAC 25.9(2) - Penalties

STATEMENT OF THE CASE

Claimant Andrew Rice filed an appeal from an Iowa Workforce Development Department decision dated October 22, 2012, reference 01, which disqualified him from receiving benefits for the period from October 14, 2012, until March 30, 2013, as an administrative penalty for false statements made to receive unemployment insurance benefits.

IWD transmitted the case to the department of Inspections and Appeals to schedule an evidentiary hearing on the appeal. On December 19, 2012, the matter proceeded to a telephone hearing before Administrative Law Judge Robert H. Wheeler. The appellant appeared pro se and testified. Investigator Irma Lewis appeared for the respondent and

testified. Exhibits 1 through 16 entered the record without objection.

FINDINGS OF FACT

The appellant had previously claimed unemployment insurance benefits on August 30, 2009. The department conducted an audit and investigation on a claim for benefits made by Andrew Rice. On May 4, 2010, a representative of Iowa Workforce Development issued a decision that Mr. Rice was over paid benefits in the amount of \$838 for the two weeks between March 28, 2010, and April 10, 2010, due to failure to correctly report earnings. That decision alleged that the overpayment was due to misrepresentation by Mr. Rice. Mr. Rice did appeal that decision, but withdrew his appeal prior to a hearing. It has become final. (Exhibits 13, 14, 15, 16; Lewis testimony).

Another audit on Mr. Rice's account occurred in April of 2012. That audit found an overpayment of \$2,112. IWD sent a copy of this audit and a letter advising Mr. Rice of the overpayment on April 24, 2012. The enclosure included an agreement to voluntarily repay IWD. Mr. Rice did not respond. (Exhibits 9, 10, 11; Lewis testimony).

Mr. Rice subsequently filed a new claim for benefits on September 23, 2012. On October 4, 2012, Investigator Lewis sent a notice to Mr. Rice of a pending decision regarding an administrative penalty. This letter allowed Mr. Rice the opportunity to respond by mail to discuss whether an administrative penalty should be assessed on his current unemployment claim. Mr. Rice responded to the letter on October 11, 2012, acknowledging that he did not correctly report wages because he believed that he could continue to claim unemployment benefits until he received his first paycheck from his new job. He also stated that he did not know that additional repercussions could result from his withdrawal of his previous appeal. He believed that repayment was the only potential consequence. On October 22, 2012, the decision under appeal issued. Investigator Lewis testified that the 24 weeks administrative penalty resulted from consideration of the length of the false reporting and the fact that two separate audits revealed overpayments. Ms. Lewis pointed out that the department could have imposed a penalty period for the entire benefit year, but chose to act more leniently. (Exhibits 1, 2, 5, 6, 7; Lewis testimony).

CONCLUSIONS OF LAW

The issue in this appeal is whether the department correctly imposed an administrative penalty disqualifying Andrew Rice from receiving unemployment insurance benefits for the period commencing October 14, 2012 until March 30, 2013.

Iowa law provides for imposition of an administrative penalty when it is determined that an individual has, within the 36 months prior to a claim for unemployment benefits, willfully and knowingly failed to disclose a material fact with the intent to obtain benefits to which he or she is not entitled. The penalty consists of a forfeiture of benefits for no longer than the remaining benefit period. The administrative penalty is to be imposed in addition to all other applicable penalties. Iowa Code section 96.5-8.

The department has adopted rules for the implementation of administrative penalties. Those rules stress that each case must be decided on its merits and that the degree and severity of the penalty is to be determined at the discretion of the investigator. 871 IAC 25.9(2)(b), 25.9(2)(c)(1). The penalty for falsification ranges from three weeks through the end of the benefit year. 871 IAC 25.92)(b).

Here, Mr. Rice was the subject of two overpayment audits and a decision based on his failure to report earned wages to the department. He withdrew his appeal that decision, and it became final.

Iowa law clearly provides for the imposition of the administrative penalty under the facts of Mr. Rice's case and specifically provides for an administrative penalty in addition to all other applicable penalties. Investigator Lewis testified to the decision process regarding the 24 week length of this administrative penalty, and such a decision rests in the investigator's discretion. The administrative penalty imposed by the department must stand.

DECISION

The decision of Iowa Workforce Development dated October 22, 2012, reference 01 is AFFIRMED. Andrew Rice is disqualified from receiving benefits for the period from October 14, 2012, through March 30, 2013.

rhw