

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

DECISION OF THE ADMINISTRATIVE LAW JUDGE

**RAY A. McKINNEY**  
**402 CENTER STREET**  
**WATERLOO, IA 50703-3616**

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

JOE WALSH, IWD

**Appeal Number: 11-IWDUI-204**  
**OC: 05/08/11**  
**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, 4<sup>TH</sup> 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)

September 9, 2011

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(Decision Dated & Mailed)

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

### **STATEMENT OF THE CASE**

Claimant Ray McKinney filed an appeal from an Iowa Workforce Development Department decision dated June 29, 2011, reference 02, which disqualified him from receiving benefits for the period from June 26, 2011 until May 5, 2012, as an administrative penalty for false statements made to receive unemployment insurance benefits.

This case was transmitted to the Department of Inspections and Appeals on August 18, 2011, for scheduling of a hearing. Notice of hearing issued on August 22, 2011.

This appeal proceeded to hearing by telephone on September 9, 2011. The claimant, Ray McKinney, appeared pro se and testified. Matt Mardesen, IWD manager for Investigations and Recovery, appeared and testified. Exhibits 1 – 3 entered the record without objection.

### **FINDINGS OF FACT**

Investigator Linda Rose of IWD determined that the claimant had received unemployment insurance benefits for the 8 week period from October 10, 2010, through December 4, 2010, while working and earning wages. During each of the weeks, the claimant reported earning no wages when filing his claims, when, in fact, he had earned enough to render him ineligible for any unemployment benefit. (Exhibit 1; Mardesen testimony).

Mr. McKinney subsequently filed a new claim for benefits on May 8, 2011. Investigator Rose sent a notice to Mr. McKinney of a pending decision regarding an administrative penalty. This letter allowed Mr. McKinney the opportunity of a fact finding interview or to respond by mail to discuss whether an administrative penalty should be assessed on his current unemployment claim. (Exhibit 2). The issue arose because of Mr. McKinney's previous failure to report wages to the department. Mr. McKinney responded by letter dated May 18, 2011, and admitted false reporting to collect benefits. (Exhibit 3; Mardesen testimony).

On June 29, 2011, IWD issued the decision under appeal. That decision held that Mr. McKinney was ineligible for unemployment benefits from June 26, 2011, through the end of his benefit year on May 5, 2012, as an administrative penalty due to his previous false statements to obtain benefits. (Exhibit 1; Mardesen testimony).

Mr. Mardesen testified that the administrative penalty is imposed at the discretion of the investigator, but according to a guideline that has existed since 1997. In this case the guideline indicated a penalty range from 16 weeks up to the end of the benefit year. The maximum penalty reflected the 8 week duration of the false claims and the fact that the claimant reported no wages on each of those weeks. (Mardesen testimony).

Mr. McKinney testified that he did not know that he had to report seasonal work. He also stated that he made the false claims to support his family and avoid the loss of his home. He expressed remorse and his willingness to repay the money. (McKinney testimony).

### **CONCLUSIONS OF LAW**

The issue in this appeal is whether the department correctly imposed an administrative penalty disqualifying Ray McKinney from receiving unemployment insurance benefits for the period commencing June 26, 2011 until May 5, 2012.

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).

Iowa law clearly provides for the imposition of the administrative penalty under the facts of Mr. McKinney's case and specifically provides for an administrative penalty in addition to all other applicable penalties. Mr. Mardesen testified to the decision process regarding the length of this administrative penalty, and such a decision rests in the investigator's discretion. Given the nature of the false claims, which involved the false reporting of no wages for an 8 week period, the administrative penalty imposed by the department must stand.

### **DECISION**

The decision of Iowa Workforce Development dated June 29, 2011, reference 02 is **AFFIRMED**. Ray McKinney is disqualified from receiving benefits for the period from June 26, 2011 through May 5, 2012, as an administrative penalty for false statements to obtain benefits.

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