

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

Appeal Number: 13IWDUI121
OC: 01/6/13
Claimant: Appellant (1)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

ALLEN HARRINGTON
3012 57TH ST.
DES MOINES, IA 50301

INVESTIGATIONS AND RECOVERY, IWD
IRMA LEWIS, INVESTIGATOR

JOE WALSH, IWD
JONI BENSON, 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.

(Administrative Law Judge)

April 26, 2013

(Dated and Mailed)

Iowa Code section 96.6(2) – Timeliness of Appeal
Iowa Code section 96.5-8 – Administrative Penalty
Iowa Code section 96.4-3 – Ineligibility for Benefits

STATEMENT OF THE CASE

Claimant/Appellant Allen Harrington filed an appeal from a decision issued by Iowa Workforce Development (“IWD”) dated January 30, 2013, reference 01, finding he was

ineligible to receive unemployment insurance benefits because he made false statements concerning his employment and earnings and did so to receive unemployment insurance benefits from January 8, 2012 through March 31, 2012. IWD imposed an administrative penalty from January 6, 2013 through January 4, 2014.

IWD transmitted the case to the Department of Inspections and Appeals on March 11, 2013 to schedule a contested case hearing. When IWD transmitted the case, it mailed a copy of the administrative file to Newton. Prior to the hearing Irma Lewis submitted additional documents on behalf of IWD and mailed a copy to Newman.

On April 25, 2013, a contested case hearing was held before Administrative Law Judge David Lindgren. Harrington failed to appear despite what appears to be valid notice. Irma Lewis appeared and testified on behalf of IWD.

ISSUES

Whether the Claimant filed a timely appeal.

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

On January 30, 2013, IWD filed a decision concluding that Harrington had made false statements concerning his earnings and employment in order to receive unemployment insurance benefits from January 8, 2012 through March 31, 2012. Harrington was also informed that an administrative penalty had been imposed which will disqualify him from receiving benefits from January 6, 2013 through January 4, 2014. The notice further informed Harrington that if he wished to appeal this decision, he would have to do so by February 9, 2013. Harrington did not appeal this decision until February 28, 2013. IWD now asserts the appeal was not timely and that this matter should be dismissed.

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.¹ The person is disqualified for the week in which IWD makes the determination and forfeits all benefit

¹ Iowa Code § 96.5(8).

rights to unemployment insurance benefits for a period of not more than the remaining benefit period as determined by IWD.² 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.³

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."⁴ 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."⁵

Iowa Code section 96.6(2) requires a claimant to file an appeal of a representative's decision "within ten calendar days after notification was mailed to the claimant's last known address." The Iowa Supreme Court has determined that timely appeal is both mandatory and jurisdictional.⁶

In this case, Harrington failed to file an appeal within ten days of the decision. The decision was dated January 30, 2013, and he only took appeal from it on February 28, 2013. This was 29 days following the decision.

DECISION

Harrington failed to timely appeal IWD's decision dated January 30, 2012, finding he received an overpayment due to misrepresentation. There is therefore no jurisdiction to hear this appeal. IWD's decision is therefore AFFIRMED.

dbl

² *Id.* § 96.5(8).

³ 871 IAC 25.9(2)c.

⁴ *Id.* 25.1.

⁵ *Id.*

⁶ *Beardslee v. Iowa Dep't of Job Servs.*, 276 N.W.2d 373, 377 (Iowa 1979).