

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

**Appeal Number: 08-IWDUI-075**  
**OC: 02/17/08**  
**Claimant: Appellant (4)**

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, 4<sup>TH</sup> Floor Lucas Building, Des Moines, Iowa 50319.**

**ANTHONY L KNOWLES**  
**4640 TOWLE AVENUE APT D**  
**HAMMOND IN 46327-1547**

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

**INVESTIGATION 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

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(Administrative Law Judge)

**May 23, 2008**

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(Decision Dated & Mailed)

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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 May 2, 2008, reference 03, which disqualified the claimant from receiving benefits for a period from April 27, 2008 to May 24, 2008, due to a prior overpayment based on misrepresentation.

The hearing was held pursuant to due notice on May 22, 2008, by telephone conference call. The claimant participated. Karen von Behren, Investigator, participated on behalf of Iowa Workforce Development, Investigation 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 February 17, 2008. A representative of Iowa Workforce Development issued a decision that the claimant was over paid benefits \$1,388.00 due to misrepresentation on May 2, 2008. The decision was not appealed, and it has now become final.

When the claimant filed an additional unemployment claim, a department representative notified Investigator von Behren. The Investigator had taken a written statement from the claimant who admitted he called-in and claimed for benefits for the four-weeks ending May 24, 2008, and he failed to report his work and wages with Djuric Trucking.

During conversations between the claimant and Investigator von Behren, he questioned receiving any benefits for the four-week claims. When the department learned that the claim payment for the two-weeks ending March 1, 2008, had not been paid, it canceled the \$694 payment, and adjusted the overpayment from \$1,388 to \$694 on April 29. The department collected the remaining overpayment of \$694 by offsetting benefits on the claimant's most recent unemployment claim, such that there is no outstanding overpayment as of the date of this hearing.

After review this matter, von Behren imposed a four-week disqualification penalty on the claimant's claim. Department policy allows a six week to sixteen week disqualification for misrepresentation overpayments of four weeks. The Investigator focused on the four-weeks the claimant failed to report his work and wages regardless of whether he received any benefit for that period.

The claimant requests a reduction of the penalty period due to the fact that two of the weeks claimed was canceled and he never received any payment for that period.

## 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 modified to a two-week period pursuant to Iowa Code Section 96.4-3 and Iowa Code Section 96.5-8. The claimant was the subject of an overpayment decision due to misrepresentation within the time period established by the law, which was not appealed, and it has now become final. The 4-week period of disqualification imposed by the department is within the administrative penalty discretion of the law.

While the department Investigator correctly focuses on the four-week period the claimant failed to report his work and wages, the fact remains that two-weeks were canceled prior to the claimant receiving any payment. The claimant should be given some penalty credit for this action in the same way the department adjusted his overpayment from \$1,388 to \$694. In addition, all of the overpayment has been satisfied.

**DECISION:**

The decision of Iowa Workforce Development dated May 2, 2008, reference 03, is MODIFIED in favor of the claimant. The claimant is disqualified from receiving benefits for the two-week period ending May 10, 2008. The claimant is entitled to receive benefits effective May 11, 2008, provided he is otherwise eligible.

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