

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

**Appeal Number:** 05-IWDUI-0978  
**OC:** 06/05/05  
**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.**

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.

**BECKY S WILSON**  
**188 RIVER FOREST ROAD**  
**EVANSDALE IA 50707**

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)

July 29, 2005

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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 June 29, 2005, reference 01, which disqualified the claimant from receiving benefits for a period from June 26, 2005 to August 20, 2005, due to a prior overpayment based on misrepresentation.

The hearing was held pursuant to due notice on July 25, 2005, by telephone conference call. The claimant participated. Sally Oordt, Investigator, participated on behalf of Iowa Workforce Development, Investigations 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 her claim for benefits effective June 1, 2003, and May 30, 2004. A representative of Iowa Workforce Development issued a decision(s) dated February 1, 2004 that the claimant was over paid benefits \$488.00 and \$352 due to misrepresentation. The department issued a decision dated April 1, 2005 that the claimant was overpaid benefits \$824 due to misrepresentation. The decisions were not appealed, and they have now become final.

When the claimant filed her most recent claim effective June 5, 2005, a department representative notified Investigator Oordt. Oordt mailed a warning letter to the claimant dated May 11, 2005 that the department was considering a penalty on her current unemployment claim due to her prior overpayments. The claimant did respond to the notice. The claimant noted that she had satisfied her overpayments by using all of her savings (\$900) and the department offset procedure.

The department has a policy of imposing a penalty range of three weeks of penalty for each week of misrepresentation. Oordt elected to impose a minimum penalty period of eight-weeks, as the claimant had satisfied the overpayment, and the misrepresentation involved a miss reporting of wages rather than a failure to report wages.

The claimant works for a school district and she is unemployed during the summer until her return to work in the latter part of August. The claimant faces a difficult financial hardship this summer in trying to support her and a grandson until she returns to work.

## 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 pursuant to Iowa Code Section 96.4-3 and Iowa Code Section 96.5-8. The claimant was the subject of overpayment decisions due to misrepresentation within the time period established by the law, which were not appealed, and they have now become final. The 8-week period of disqualification imposed by the department is within the administrative penalty discretion of the law.

Investigator Oordt imposed a minimum penalty due to the circumstances regarding the overpayment, but the claimant using all of her savings (\$900) to repay the overpayment should be given some additional consideration in light of her continuing unemployment during the summer until her return to work in late August. This is a situation where the misrepresentation is a miss reporting rather than a failure to report earnings.

**DECISION:**

The decision of Iowa Workforce Development dated June 29, 2005, reference 01, is MODIFIED in favor of the claimant. The claimant is disqualified from receiving benefits for the 5-week period ending July 23, 2005. The claimant is entitled to receive benefits effective July 24, 2005, provide she is otherwise eligible.

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