

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

**Appeal Number:** 10-IWDUI-084  
**OC:** 01-10-10  
**Claimant:** Appellant (1)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

**NORMAN E. WELLS**  
**910 9<sup>TH</sup> STREET, APT 5**  
**WEST DES MOINES, IA 50265-3649**

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

DAN ANDERSON, 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, 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.

---

(Administrative Law Judge)

April 6, 2010

---

(Decision Dated & Mailed)

---

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

### STATEMENT OF THE CASE

Claimant Norman E. Wells filed an appeal from an Iowa Workforce Development Department decision dated February 10, 2010, reference 1, which disqualified him from receiving benefits for the period from January 31, 2010 until the end of his benefits year on January 8, 2011, due to a prior overpayment history based on misrepresentation.

Hearing was scheduled for April 5, 2010 and due notice was sent to all parties. At the time of hearing, Investigator Irma Lewis appeared and participated on behalf of Iowa Workforce Development. Appellant Norman Wells appeared and participated on his own behalf. The contents of the administrative file consisting of pages numbered 1-14

were admitted into evidence. Additionally, Workforce Development's Exhibit A was also made a part of the record.

### **FINDINGS OF FACT**

The department conducted an audit and investigation on a claim for benefits made by Norman E. Wells. On June 2, 2009, Mr. Wells met with Investigator Irma Lewis who informed him of her conclusion that he had misrepresented his wages to the department in an effort to obtain benefits to which he was not entitled. Mr. Wells signed a *Statement of Fact* on that date which was prepared by Ms. Lewis and which stated that Mr. Wells had admitted he knew what he had done was wrong, he agreed to pay \$110 per month toward the overpayment and he was informed that failure to pay would result in legal action being taken against him. Also, according to the *Statement of Fact* signed by Mr. Wells, Ms. Lewis informed him that an administrative penalty would be placed on his file. On June 3, 2009, a representative of Iowa Workforce Development issued a decision that Mr. Wells had been over paid benefits in the amount of \$3,871 for the 20 weeks between November 2, 2008 and March 21, 2009 due to misrepresentation. That decision has become final.

Mr. Wells filed a new claim for benefits effective January 10, 2010. After Investigator Lewis was notified of the claim she sent a notice to Mr. Wells of the possibility Workforce Development would impose an administrative penalty on his current unemployment claim. Mr. Wells was given the opportunity to respond by mail on or before February 8, 2010 with any reasons why a penalty should not be imposed. MR. Wells did not respond.<sup>1</sup> On February 10, 2010, the department issued its decision imposing the administrative penalty against Mr. Wells.

### **CONCLUSIONS OF LAW**

The issue in this appeal is whether the department correctly imposed an administrative penalty disqualifying Norman E. Wells from receiving unemployment insurance benefits for the period commencing January 31, 2010 through the end of his benefit year, January 8, 2011.

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.<sup>2</sup>

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.<sup>3</sup>

---

<sup>1</sup> Mr. Wells testified at hearing that he did not receive the notice which was accompanied by a letter dated January 28, 2010 from Investigator Lewis.

<sup>2</sup> Iowa Code section 96.5-8.

<sup>3</sup> 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.<sup>4</sup>

Here, Mr. Wells was the subject of an overpayment decision based on his misrepresentation to the department. He admitted that he misrepresented his earnings information to the department each week during each of the twenty weeks when he reported to Workforce Development that he did not work. Mr. Wells failed to report his wages despite explicit warnings that misrepresenting his earnings might result in a loss of benefits.

Iowa law clearly provides for the imposition of the administrative penalty under the facts of Mr. Wells' case and specifically provides for an administrative penalty in addition to all other applicable penalties. The administrative penalty imposed by the department should therefore be affirmed.

### **DECISION**

The decision of Iowa Workforce Development dated February 10, 2010, reference 01 is AFFIRMED. Norman E. Wells is disqualified from receiving benefits for the period from January 31, 2010 through the end of his benefit year, January 8, 2011.

kka

---

<sup>4</sup> 871 IAC 25.92)(b).