

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

Appeal Number: 12IWDUI201
OC: 03/04/12
Claimant: Appellant (1)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

ARLOS E. FISHER
1521 WASHINGTON STREET
CEDAR FALLS, IA 50613-4156

INVESTIGATIONS AND RECOVERY, IWD
JANE CONNOR, INVESTIGATOR

JOE WALSH, IWD
CARLA DENNIS

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)

June 7, 2012

(Dated and Mailed)

Iowa Code section 96.5-8 – Administrative Penalty
Iowa Code section 96.4-3 – Ineligibility for Benefits

STATEMENT OF THE CASE

Claimant/Appellant Arlos Fisher filed an appeal from a decision issued by Iowa Workforce Development (“IWD”) dated April 18, 2012, 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 30, 2011 through October 29, 2011. IWD imposed an

administrative penalty from April 15, 2012, until the end of Fisher's benefit year on March 9, 2013.

IWD transmitted the case to the Department of Inspections and Appeals on May 14, 2012 to schedule a contested case hearing. When IWD transmitted the case, it mailed a copy of the administrative file to Fisher.

On June 6, 2012, a contested case hearing was held before Administrative Law Judge Heather L. Palmer. Fisher appeared and testified. Jane Connor appeared and testified on behalf of IWD. Exhibits 1 through 12 were admitted into the record.

ISSUES

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

IWD learned that Fisher was employed by Lentzkow Enterprises, Inc., Mutt, Inc., Kelly Services, Inc., and River Rat while he was receiving unemployment insurance benefits. Fisher did not report his employment to IWD.

IWD issued a decision finding Fisher had been overpaid \$5,042.42 between February 5, 2011 and October 29, 2011 because he failed to report his wages earned from Lentzkow Enterprises, Inc., Mutt, Inc., Kelly Services, Inc., and River Rat. The decision finding Fisher had been overpaid is not the subject of this appeal. Fisher did not appeal the overpayment determination and has repaid the overpayment in full.

Fisher requested additional unemployment insurance benefits in March 2012. Connor testified IWD flagged Fisher's case after it issued the overpayment decision. Connor testified she sent Fisher a letter on April 5, 2012 stating IWD was considering imposing an administrative penalty because he failed to correctly report his wages and provided false information to IWD. Connor provided Fisher with the opportunity to respond by mail on April 18, 2012.

On April 12, 2012 Fisher contacted Connor to inquire why he had not received unemployment benefits. Connor explained that IWD was considering whether to impose an administrative penalty given Fisher's previous overpayment. Connor asked Fisher why he failed to correctly report his wages. He told Connor that someone told him he did not need to report his income. Fisher declined to identify who provided him with the advice.

Connor inquired whether Fisher had received her letter and attachments regarding the overpayment and imposition of an administrative penalty. Fisher was uncertain if he

received the information. Connor verified Fisher's address and mailed him another copy of the letter and attachments. Connor did not receive an additional response from Fisher.

On April 18, 2012, IWD issued a decision, reference 01, finding Fisher 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 30, 2011 until October 29, 2011. IWD imposed an administrative penalty from April 15, 2012, until the end of Fisher's benefit year on March 9, 2013.

Connor determined Fisher failed to correctly report his earnings for 26 weeks and that an administrative penalty should be imposed. Connor testified IWD follows a policy of imposing an administrative penalty for the remainder of the benefit year when a claimant fails to correctly report his or her wages for 9 weeks or more.

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 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

¹ Iowa Code § 96.5(8).

² *Id.* § 96.5(8).

³ 871 IAC 25.9(2)c.

⁴ *Id.* 25.1.

⁵ *Id.*

The governing statute and rules do not define the terms willfully and knowingly.⁶ Therefore, it is necessary to turn to the rules of statutory and regulatory interpretation. The purpose of statutory interpretation is to determine the true intent of the legislature.⁷ When the legislature has not defined the words of a statute, the Iowa Supreme Court looks to prior decisions of the court, similar statutes, dictionary definitions, and common usage.⁸ The rules of statutory interpretation also govern the interpretation of an administrative agency's rules.⁹ The courts construe administrative rules together, using "common sense and sound reason."¹⁰

Black's Law Dictionary defines knowing as "having or showing awareness or understanding" and "deliberate; conscious."¹¹ Willful is defined as "voluntary and intentional, but not necessarily malicious."¹²

Fisher acknowledged he received an overpayment. He reported he received bad advice from a person at a church function. Fisher did not identify who provided him with the advice.

Fisher has repaid the overpayment and believes an administrative penalty should not be imposed. Connor testified Fisher failed to correctly report his wages for 26 weeks while he requested and received weekly unemployment benefits. The information Fisher provided to IWD was false. I conclude Fisher's statements to IWD each week were willful and false statements knowingly made to receive benefits Fisher was not entitled to receive. Imposition of an administrative penalty is appropriate.

Connor imposed a penalty for the remainder of the benefit year. IWD's rules afford the investigator discretion to determine the degree and severity of the penalty, based on the nature of the offense and facts.¹³ I cannot conclude Connor's imposition of an administrative penalty from April 15, 2012 through the end of the benefit year on March 9, 2013 was in error. Because IWD correctly imposed an administrative penalty, Fisher is also ineligible to receive unemployment insurance benefits from April 15, 2012 through March 9, 2013.¹⁴ IWD's decision should be affirmed.

⁶ Iowa Code section 96.16(5)b defines knowingly for purposes of the subsection as "having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the requirement or prohibition involved."

⁷ *Bob Zimmerman Ford, Inc. v. Midwest Automotive I, L.L.C.*, 679 N.W.2d 606, 609 (Iowa 2004).

⁸ *Id.* at 609 (citing *Bernau v. Iowa Dep't of Transp.*, 580 N.W.2d 757, 761 (Iowa 1998)).

⁹ *Messina v. Iowa Dep't of Job Serv.*, 341 N.W.2d 52, 56 (Iowa 1983).

¹⁰ *Id.*

¹¹ *Black's Law Dictionary* (7th Ed. 1999).

¹² *Id.*

¹³ 871 IAC 25.9(2)c.

¹⁴ Iowa Code § 96.4(3).

DECISION

IWD's decision dated April 18, 2012, reference 01, is AFFIRMED. IWD correctly imposed an administrative penalty disqualifying Fisher from receiving unemployment insurance benefits from April 15, 2012 through March 9, 2013.

hlp