

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

**Appeal Number:** 13IWDUI358, 359  
**OC:** 5/12/13  
**Claimant:** Appellant (1)

**DECISION OF THE ADMINISTRATIVE LAW JUDGE**

**JOHN BEVILACQUA**  
**2135 SE 3<sup>rd</sup> STREET**  
**DES MOINES, IA 50315-1550**

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

JONI BENSON, IWD  
IRMA LEWIS, 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)

---

September 4, 2013

(Dated and Mailed)

---

Iowa Code section 96.2(2) – Timely Appeal  
Iowa Code section 96.16(4) – Misrepresentation

**STATEMENT OF THE CASE**

John Bevilacqua filed an appeal from a decision issued by Iowa Workforce Development (IWD) dated July 10, 2013, reference 01. In this decision, IWD determined that Mr. Bevilacqua was not eligible for unemployment insurance benefits for the period between, July 7, 2013, and May 10, 2014, the end of his benefit year, as an administrative penalty for false statements made in order to receive benefits.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals on January 15, 2013, for scheduling of a contested case hearing, and included another IWD decision. The second decision, dated January 28, 2013, reference 03, found Mr. Bevilacqua had been overpaid benefits in the amount of \$1,941, as a result of misrepresentation in failing to report wages earned from Spartan Staffing, LLC. This decision was not appealed.

A Notice of Telephone Hearing was mailed to all parties on July 31, 2013, setting a hearing on September 4, 2013. On September 4, 2013, a telephone appeal hearing was held before Administrative Law Judge Robert H. Wheeler. Appellant John Bevilacqua appeared pro se and testified. Investigator Irma Lewis appeared for IWD and testified. Exhibits 1 through 36 entered the record without objection.

### **ISSUES**

Whether the claimant filed a timely appeal.

Whether IWD correctly determined that the claimant was overpaid unemployment insurance benefits.

Whether IWD correctly determined that an overpayment was the result of misrepresentation on the part of the claimant.

Whether IWD correctly determined that the claimant was ineligible to receive unemployment insurance benefits.

Whether IWD correctly imposed an administrative penalty on the basis of false statements made by the claimant to receive benefits.

### **FINDINGS OF FACT**

John Bevilacqua received unemployment benefits in 2003, 2005, 2007, 2009 and 2012. In each of those years IWD issued decisions finding benefits overpayments due to misrepresentation. (Exhibits 10, 14 – 35). Seven prior decisions found overpayments to MR. Bevilacqua due to his failure to report earnings when claiming unemployment insurance benefits. On at least one occasion, on August 4, 2009, Mr. Bevilacqua admitted fraudulent claims to Investigator Lewis. (Exhibit 23, Lewis testimony). In 2009, the Polk County Attorney charged Mr. Bevilacqua with felony Fraudulent Practice based on the overpayments from IWD. That criminal case was dismissed without prejudice on June 17, 2011, when Mr. Bevilacqua paid restitution of \$8,410 in full. (Exhibit 36; Lewis testimony).

Most recently, Mr. Bevilacqua was overpaid benefits in the amount of \$1, 941 for a 12 week period between April 8, 2012, and July 7, 2012. On January 28, 2013, IWD issued a decision establishing this overpayment due to misrepresentation. (Exhibit 10). Although this decision was certified as at issue in this appeal, Mr. Bevilacqua stated that he did not intend to appeal this decision. In addition, any appeal of this decision at this time would not be timely. (See Conclusions of Law, below).

Mr. Bevilacqua subsequently filed a new claim for benefits on May 12, 2013. On May 21, 2013, Investigator Irma Lewis sent a notice to Mr. Bevilacqua of a pending decision regarding an administrative penalty. This letter allowed Mr. Bevilacqua the opportunity to respond by mail prior to May 31, 2013, to discuss whether an administrative penalty should be assessed on his current unemployment claim. The issue arose because of Mr. Bevilacqua's previous overpayment which resulted from his failure to report wages to the department. Mr. Bevilacqua did not respond to the letter, and on July 10, 2013, the decision under appeal, imposing an administrative penalty through the end of the benefits year issued. The decision noted the overpayment from April 8, 2012, until July 7, 2012, and disqualified Mr. Bevilacqua from receiving benefits as of July 7, 2013, until the end of his benefit year on May 10, 2014. This appeal followed. (Exhibits 3, 15; Lewis testimony).

Mr. Bevilacqua stated that an employee of IWD, named Pat, last name unknown, advised him incorrectly regarding the overpayment in 2012, stating that he did not have to report part time wages when making a claim for benefits as long as the wages did not exceed his benefits. He therefore acted in good faith reliance when failing to report earnings.

### **REASONING AND CONCLUSIONS OF LAW**

#### **A. Timely Appeal**

Iowa Code section 96.6 (2) provides (in pertinent part),

“...Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.”

The decision dated January 28, 2013, advised Mr. Bevilacqua that it would become final unless an appeal was postmarked or received by 2/7/13. No appeal was received in that time period. The January 28, 2013, decision became final by operation of law on February 7, 2013, ten calendar days after the decision. The appeal in this matter followed that decision by six months. An appeal of that decision is not timely, and there is no need to address the merits of the January 28, 2013, decision further because the time limit is jurisdictional.

#### **B. Administrative Penalty**

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. Iowa Code section 96.5-8.

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. 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. 871 IAC 25.92)(b).

Here, Mr. Bevilacqua was the subject of seven prior audits and a recent overpayment decision based on his failure to report earned wages to the department. He did not appeal that decision, and it became final. That overpayment involved 12 weeks of overpaid benefits. Mr. Bevilacqua's testimony that he relied on bad advice from an IWD employee when he failed to report wages is not credible in light of the seven prior audits, his admission to fraud to Investigator Lewis and the criminal charges he faced in the Polk County District Court.

Iowa law clearly provides for the imposition of the administrative penalty under the facts of Mr. Bevilacqua's case and specifically provides for an administrative penalty in addition to all other applicable penalties. Investigator Lewis testified to the decision process regarding the length of this administrative penalty, and such a decision rests in the investigator's discretion. The administrative penalty imposed by the department must stand.

### **DECISION**

The decision of Iowa Workforce Development dated July 10, 2013, reference 01 is **AFFIRMED**. John Bevilacqua is disqualified from receiving benefits for the period from July 7, 2013, through the end of his benefit year, May 10, 2014.

rhw