

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

DECISION OF THE ADMINISTRATIVE LAW JUDGE

JUSTIN SPARKS
1125 RANCHEL DRIVE
DES MOINES, IA 50320-6748

IOWA WORKFORCE DEVELOPMENT
INVESTIGATIONS AND RECOVERY
IRMA LEWIS
150 DES MOINES STREET
DES MOINES IA 50309

JOE WALSH, IWD

Appeal Number: 12IWDUI082
OC: 12/11/11
Claimant: Appellant (1)

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 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)

April 26, 2012

(Decision Dated & Mailed)

STATEMENT OF THE CASE

Justin Sparks filed an appeal from a decision issued by Iowa Workforce Development (the Department) dated January 11, 2012, reference 01. In this decision, the Department imposed an administrative penalty that disqualified Sparks from receiving unemployment insurance benefits from December 25, 2011 through April 14, 2012.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals on February 20, 2012 to schedule a contested case hearing. A Notice of Telephone Hearing was mailed to all parties on February 24, 2012. On March 23, 2012, a telephone appeal hearing was held before Administrative Law Judge Laura Lockard. Investigator Irma Lewis represented the Department and presented testimony. Matt Mardesen also testified for the Department. Appellant Justin Sparks

appeared and presented testimony. Exhibits A through K were submitted by the Department and admitted into the record as evidence.

ISSUE

Whether the Department correctly imposed an administrative penalty on the basis of false statements made by the Appellant.

FINDINGS OF FACT

Justin Sparks filed a claim for unemployment insurance benefits with an effective date of December 11, 2011. At some point after Sparks filed this claim, the Department began investigating whether a previous overpayment incurred by Sparks justified the imposition of an administrative penalty. (Lewis testimony; Exh. D).

During the fall of 2011, while Sparks was receiving benefits on a prior claim, there were five weeks during September and October when Sparks' employer, Corell Contractor Inc., reported that he earned wages. Corell informed the Department that Sparks began working on September 13, 2011. Corell reported that Sparks earned \$666 during the week ending September 17; \$707 during the week ending September 24; \$439 during the week ending October 1; and \$1,099 during the week ending October 8. (Exh. H, I; Lewis testimony). Sparks reported to the Department during each of those weeks that he did not work and he did not report having earned wages during any of the weeks. (Lewis testimony).

The Department sent Sparks a preliminary audit notice regarding the potential overpayment on October 13, 2011. Sparks was invited to respond by mail concerning the discrepancy by October 27, 2011. Sparks did not respond to preliminary audit notice by the deadline. The Department issued a decision on October 28, 2011 finding that Sparks was overpaid \$1,560 for the four weeks in question; the Department also determined that the overpayment was a result of misrepresentation. (Exh. E).¹

Sparks came in to talk to investigator Irma Lewis at her office after receiving the overpayment decision. Sparks told Lewis that he did not remember working for Correll during the dates in question. He requested that Lewis and the Department make the matter "go away." Sparks did not, however, appeal the overpayment decision. (Lewis testimony).

After Sparks filed a new claim with an effective date of December 11, 2011, the Department mailed him a letter on December 14, 2011 explaining that it would be making a determination regarding whether to impose an administrative penalty that would disqualify Sparks from receiving benefits for a set amount of time. The letter indicated that the administrative penalty was being considered based on Sparks' failure

¹ While the Department's decision does not specifically state that the overpayment was the result of misrepresentation, the decision states that it was made under section 96.16(4) of the Iowa Code. That section relates to overpayments made as a result of misrepresentation and the consequences the Department may impose.

to report wages earned with Corell Contractor. The Department gave Sparks the opportunity to respond by mail by December 27, 2011 concerning the possible administrative penalty. (Exh. D). Sparks did not make contact with the Department to discuss the issue prior to the deadline. (Lewis testimony).

Based on the circumstances of the 2011 overpayment, the Department made the decision to impose an administrative penalty disqualifying Sparks from receiving unemployment insurance benefits from December 25, 2011 through April 14, 2012, a 16-week penalty. (Exh. B). Lewis testified that for four weeks of misrepresentation, she can disqualify a claimant for up to 16 weeks. (Lewis testimony). The Department issued the decision imposing the administrative penalty on January 11, 2012. (Exh. B).

Sparks came in and talked to Lewis personally again after the Department issued the administrative penalty decision, in late January or early February of 2011. Sparks did not deny working for Correll during the weeks in question, but again asked Lewis, and later her supervisor, Matt Mardesen, to make the matter go away. (Lewis; Mardesen testimony).

In his written appeal of the administrative penalty decision, Sparks asserted that there were no undisclosed earnings, that he had paid off his overpayments, that he did all of his call-ins regularly, and that he did not work all summer until he started with Corell Contractor in October, 2011. (Exh. A). At hearing, Sparks testified that he thought he was an independent contractor during the first few weeks that he was working with Corell. Sparks testified that he did not get paid for approximately two weeks after starting, then his paycheck was direct deposited, so he did not review any pay stubs. Sparks testified that he did not review an actual paystub until about five weeks after he began working for Corell; while he noticed there was money in his bank account after about three weeks, he testified that he did not see a paystub at that time. According to Sparks, it was not until he saw a paystub about five weeks into working that he realized he was an employee of Corell. (Sparks testimony).

REASONING AND CONCLUSIONS OF LAW

The Department is authorized to impose an administrative penalty when it determines that an individual has, within the thirty-six preceding 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 obtain unemployment benefits to which the individual is not entitled.² The imposition of an administrative penalty results in the forfeiting of all unemployment benefits for a period of time to be determined by the Department; the period, however, cannot exceed the remainder of the individual's benefit year.³

The Department's investigator considers the facts and nature of the offense in determining the degree and severity of the penalty. The penalty range for falsification is

² Iowa Code § 96.5(8) (2011).

³ *Id.*

from three weeks through the remainder of the benefit year. The investigator has broad discretion to determine the actual penalty to be imposed within the range.⁴

The evidence in this case demonstrates that Sparks reported to the Department that he was not working for four weeks after he began working for Corell Contractor in September, 2011. Sparks first denied any recollection of working for Corell during the time period in question, then argued at hearing that the reason he did not report wages during the four weeks at issue was because he was unaware he was an employee, as opposed to an independent contractor. The wage records submitted by the employer leave no doubt that Sparks was an employee during the time period in question. I do not credit Sparks testimony that he did not know that he was an employee for an entire month after beginning work with Corell. The fact that Sparks did not raise this argument in either of his conversations with Lewis or his appeal letter casts doubt on its truthfulness. In his first conversation with Lewis, Sparks stated that he did not recall working for Corell during the time period in question. In his appeal letter, Sparks asserted that he did not begin working for Corell until October. The fact that Sparks has offered at least two different – and contradictory – explanations for his failure to report his first four weeks' wages from Corell makes both of the proffered explanations less credible.

I conclude that Sparks willfully and knowingly failed to disclose the wages earned from Corell in order to obtain unemployment insurance benefits to which he was not entitled. Under these circumstances, the Department correctly imposed an administrative penalty. The length of the penalty imposed does not exceed the time period mandated in the Department's regulations.

DECISION

Iowa Workforce Development's decision dated April 23, 2009, reference 3 is **AFFIRMED**. The claimant has been overpaid benefits in the amount of \$4,162 due to misrepresentation.

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⁴ 871 Iowa Administrative Code (IAC) 25.9(2).