

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

**Appeal Number: 05-IWDUI-0953**  
**OC: 04/17/05**  
**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.**

**MARQUE H STROTHER**  
**1427 EAST 15<sup>TH</sup> STREET**  
**DES MOINES IA 50316**

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

**INVESTIGATIONS 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)

**JUNE 10, 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 May 5, 2005, reference 01, which disqualified the claimant from receiving benefits for a period from April 17, 2005 to September 10, 2005, due to a prior overpayment based on misrepresentation.

The hearing was held pursuant to due notice on June 6, 2005, by telephone conference call. The claimant did participate. Cindy Stroud, 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 his claim for benefits effective September 21, 2003. The department audited the claimant's claim for the fourth quarter of 2003, and the first quarter of 2004.

A representative of Iowa Workforce Development issued a decision that the claimant was over paid benefits \$1,227.00 due to misrepresentation on May 25, 2004. The decision was not appealed, and it has now become final. A department representative issued a subsequent decision that the claimant was overpaid benefits \$430.77 due to misrepresentation on September 7, 2004. The decision was not appealed, and it has now become final.

When the claimant filed his most recent claim effective April 17, 2005, a department representative notified Investigator Stroud. Stroud mailed a warning letter to the claimant dated April 22, 2005 regarding an administrative penalty due to the overpayments, and he did respond.

The department has a policy of disqualifying an individual anywhere from one to six weeks for each week of misrepresentation in circumstances like this case. Stroud noted that the two overpayments involved eight weeks of a failure to report any wages, so she imposed a penalty of three weeks of disqualification for each of the eight weeks of overpayment, for a penalty period of twenty-four weeks. Stroud considered that the claimant had made no attempt to repay the overpayment(s), and she chose to impose a moderate penalty.

The claimant is a nurse and he has a work history of employment with temporary agencies. The claimant has recently experienced some vision problems, but he is able to accept work at this time.

**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 24-week period of disqualification imposed by the department is within the administrative penalty discretion of the law.

The claimant did offer some mitigating circumstances regarding the temporary and sporadic nature of his employment that lead to his overpayments, but the decisions are final as to the issue of misrepresentation. In addition, the claimant has not made any repayment of the overpayment.

The penalty period should be reduced from three to two weeks of disqualification for each of the eight weeks the claimant incurred overpayments.

**DECISION:**

The decision of Iowa Workforce Development dated May 5, 2005, reference 01, is MODIFIED in favor of the claimant. The claimant is disqualified from receiving benefits for the 16-week period ending August 6, 2005.

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