

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

**Appeal Number: 15IWDUI027**  
**OC: 12/30/14**  
**Claimant: Appellant (1)**

**DECISION OF THE ADMINISTRATIVE LAW JUDGE**

**KELLY BURCH**  
**3922 8<sup>TH</sup> PLACE**  
**DES MOINES, IA 50313**

**INVESTIGATIONS AND RECOVERY, IWD**  
**MICHELLE SADDORIS, INVESTIGATOR**

JONI BENSON, 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.

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(Administrative Law Judge)

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February 27, 2015  
(Dated and Mailed)

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Iowa Code section 96.7-7: Recovery of Overpayment Benefits  
Iowa Code section 96.16-4: Misrepresentation  
Iowa Code section 96.5-8: Administrative Penalty  
Iowa Code section 96.4-3: Ineligibility for Benefits

### **STATEMENT OF THE CASE**

The Appellant, Kelly Burch, filed a timely appeal from a decision issued by Iowa Workforce Development (the Department or IWD) dated December 30, 2014, reference 01. In this decision, the Department imposed an administrative penalty which disqualified him from receiving benefits from December 7, 2014 through March 14, 2015.

This case was transmitted from Iowa Workforce Development to the Department of Inspections and Appeals on January 20, 2015 for scheduling of a contested case hearing. A Notice of Telephone Hearing was mailed to all parties on January 27, 2015. On February 23, 2015, a telephone appeal hearing was held before Administrative Law Judge Kristine Dreckman. Investigator Michelle Saddoris represented the department and presented testimony. Appellant Kelly Burch appeared and presented testimony. Exhibits A through F were submitted by the Department and admitted into the record without objection.

### **ISSUES**

Whether the Department correctly determined the claimant is ineligible to receive unemployment insurance benefits.

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

### **FINDINGS OF FACT**

On December 6, 2013, the Department issued a notice of decision finding that the Appellant had been overpaid \$1,416.00 in unemployment benefits between April 28, 2013 and June 15, 2013 because he had failed to report wages earned during that time. The notice further stated that the Appellant was subject to a penalty due to his misrepresentation. The Appellant did not appeal, and the decision became final on December 16, 2013. (Exhibit A1; Saddoris Testimony).

The Department had determined that the Appellant had failed to properly report earnings while receiving unemployment benefits two previous occasions. On January 5, 2012, the Department issued a notice of decision finding that the Appellant was overpaid \$858.00 in unemployment benefits between April 3, 2011 and June 11, 2011 for failing to report wages earned. Further, on November 9, 2009, the Department issued a decision finding that the Appellant was overpaid unemployment benefits in the amount of \$1,065.00 from April 10, 2009 through June 13, 2009. The Appellant did not appeal in either instance, and the decisions subsequently became final. (Exhibits A2-A3; Saddoris Testimony).

On December 7, 2014, the Appellant again filed a claim with the Department for unemployment benefits. Because the Department had determined the Appellant was previously overpaid due to falsely reporting his earnings, his claim for benefits was forwarded to an investigator for review. IWD Investigator Michelle Saddoris reviewed the Appellant's file and notified the Appellant of the potential administrative penalty. After providing the Appellant an opportunity to respond, Saddoris determined the appropriate penalty was to disqualify him from receiving benefits for a total of fourteen weeks. In her decision, she considered the fact that the Appellant's last offense was fraudulently misrepresenting his earnings to the Department for a total of seven weeks. Saddoris also considered the fact the Appellant was found to have falsely represented his earnings on three separate occasions. Therefore, on December 30, 2014, the Department issued a notice of decision to disqualify the Appellant from receiving benefits from December 7, 2014 through March 14, 2105. (Exhibits D-F).

The Appellant filed a timely appeal. In his request and t hearing, the Appellant acknowledged that he had previously filed fraudulent claims for unemployment benefits. The Appellant further reported that he knew his actions were wrong. He has repaid the previously overpaid benefits to the Department. Therefore, he believes the penalty imposed is too severe. He requested that the disqualification period be reduced. (Burch Testimony).

### **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.<sup>1</sup> 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.<sup>2</sup>

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<sup>1</sup> Iowa Code § 96.5(8).

<sup>2</sup> *Id.*

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 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.<sup>3</sup>

In this case, the Appellant willfully and knowingly made fraudulent claims for unemployment insurance benefits on three separate occasions. The most recent occurrence included seven weeks of fraudulently-obtained unemployment benefits. The Appellant reports that he has paid back the wrongfully obtained money to the Department—as he was required to do under previous decisions. The Appellant, however, clearly has not fully realized the severity of his actions.

Under these circumstances, the Department's decision to impose an administrative penalty was correct and the length of the administrative penalty imposed does not exceed the time period allowed in the Department's regulations.

### **DECISION**

Iowa Workforce Development's decision dated December 30, 2014 (reference 01) is **AFFIRMED**. The Department correctly imposed the administrative penalty. The Department shall take any action necessary to implement this decision.

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<sup>3</sup> 871 Iowa Administrative Code (IAC) 25.9(2).