

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 her claim for benefits effective July 25, 2004. A representative of Iowa Workforce Development issued a decision that the claimant was over paid benefits \$900.00 due to misrepresentation on June 7, 2005. The decision was not appealed, and it has now become final.

When the claimant filed her most recent claim effective July 24, 2005, a representative of the department notified Investigator Stroud. Stroud mailed a notice to the claimant on August 16, 2005 that warned her the department was considering a penalty on her current claim. The claimant responded by letter, and she expressed some confusion about the job she worked, and a delay in receiving pay as to factors that lead to the overpayment.

Stroud imposed a penalty of two-weeks of disqualification for each of the five-weeks the claimant failed to report earnings that caused the \$900 overpayment. Since the audit and decision closely approximated the penalty review, Stroud concluded the claimant did not have a sufficient opportunity to begin repayment. Due to a department backdating procedure and time lapse for notifying Stroud, the department did collect all but \$85 of the \$900 overpayment. This is a first offense noted by the department.

The claimant worked as a telephone-communicator/fundraiser for a political campaign, and she was uncertain about whether she would be paid for her work or considered a volunteer. The claimant received payment for her work about the fifth week she claimed for unemployment according to the department audit.

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 an overpayment decision due to misrepresentation within the time period established by the law, which was not appealed, and it has now become final. The 10-week period of disqualification imposed by the department is within the administrative penalty discretion of the law.

The claimant satisfied most of the overpayment though she did not have any significant period to make any repayment, and this is a first offense situation. While the claimant's explanation regarding how she failed to report wages does not mitigate the misrepresentation, it is a factor that justifies a penalty period reduction from ten to five weeks.

DECISION:

The decision of Iowa Workforce Development dated August 30, 2005, reference 01, is MODIFIED in favor of the claimant. The claimant is disqualified from receiving benefits for the (5) five-week period ending September 17, 2005. The claimant is entitled to receive benefits effective September 18, 2005, provided she is otherwise eligible.

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