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

Appeal Number: 13IWDUI122
OC: 01/6/13
Claimant: Appellant (1)

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, 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.

ADAM NEWTON
112 W. MAIN ST.
PULASKI, IA 52584

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.

INVESTIGATIONS AND RECOVERY, IWD
KAREN VON BEHREN, INVESTIGATOR

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.

JOE WALSH, IWD
JONI BENSON, IWD

_____
(Administrative Law Judge)

April 26, 2013
_____
(Dated and Mailed)

Iowa Code section 96.5-8 – Administrative Penalty
Iowa Code section 96.4-3 – Ineligibility for Benefits

STATEMENT OF THE CASE

Claimant/Appellant Adam Newton filed an appeal from a decision issued by Iowa Workforce Development ("IWD") dated February 22, 2013, reference 01, finding he was ineligible to receive unemployment insurance benefits because he made false statements

concerning his employment and earnings and did so to receive unemployment insurance benefits from April 3, 2011 through November 19, 2011. IWD imposed an administrative penalty from February 17, 2013 through January 4, 2014.

IWD transmitted the case to the Department of Inspections and Appeals on March 11, 2013 to schedule a contested case hearing. When IWD transmitted the case, it mailed a copy of the administrative file to Newton. Prior to the hearing Karen von Behren submitted additional documents on behalf of IWD and mailed a copy to Newman.

On April 25, 2013, a contested case hearing was held before Administrative Law Judge David Lindgren. Newton appeared and testified. Von Behren appeared and testified on behalf of IWD. Exhibits A1 through E1 were admitted into the record.

ISSUES

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

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

FINDINGS OF FACT

Newton filed a claim for unemployment compensation in January of 2011. IWD does a quarterly cross-match audit. The fourth quarter audit showed an apparent overpayment of benefits, in particular based on an under-reporting of earnings from Dearborn Roofing Inc. Based on this information, IWD sent Dearborn a request for additional information. Dearborn reported Newton's weekly hours worked and gross wages earned from March 27, 2011 through May 1, 2011. These figures showed that Newton had underreported his earnings to IWD by a substantial amount.

A preliminary audit notice was then sent to Newton showing a total overpayment of $3048.93. Newton was scheduled for an interview in the Ottumwa office on June 4, 2012. He did not attend this interview or call in. Ms. Von Behren then reviewed the information and found that Newton had committed fraud and had received an overpayment. A Notice of Decision (NOD) was mailed to Newton requiring him to repay the $3048.93 overpayment. This amount was paid off by Newton.

On January 6, 2013, Von Behren received information that Newton had filed a new unemployment compensation claim on January 6, 2013. She then requested a telephonic fact finding interview with Newton to determine a possible penalty. He did participate in this interview. Von Behren also looked at his history and noted that he currently had fifteen weeks of overpayment, that he also had five other overpayment reports in the past, and that one of them was so significant that he had been penalized for it. Based on this information, Von Behren decided that Newton should be

disqualified from receiving any benefits for the remainder of his benefit year, from February 17, 2013 through January 4, 2014. Von Behren explained that Newton's case was only brought to her attention in January when he filed the new claim. She then acted immediately upon it.

Newton took appeal from this decision. At the hearing, he admitted that he had reported his income falsely and that it was wrong. He is not trying to fight that fact. He just disagrees with the length of the administrative penalty. He believes the penalty period should have started in 2012 when he filed a separate claim in October. If that had been the case, he believes his penalty would have been less lengthy.

REASONING AND CONCLUSIONS OF LAW

IWD may impose an administrative penalty if an insured person has, within the preceding 36 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 defraud by obtaining benefits the person is not entitled to.[1] The person is disqualified for the week in which IWD makes the determination and forfeits all benefit rights to unemployment insurance benefits for a period of not more than the remaining benefit period as determined by IWD.[2] The IWD investigator exercises his or her discretion to determine the degree and severity of the penalty, based on the nature of the offense and facts.[3]

IWD's rules define intent as "the design, resolve, or determination with which an individual or group of individuals acts in order to reach a preconceived objective."[4] Fraud is defined as "the intentional misuse of facts or truth to obtain or increase unemployment insurance benefits for oneself . . . ; a false representation of a matter of fact, whether by statement or by conduct, by false or misleading statements or allegations; or by the concealment or failure to disclose that which should have been disclosed, which deceives and is intended to deceive another so that they, or [IWD], shall not act upon it to their, or its, legal injury."[5]

I conclude Newton's statements to IWD each week were willful and false statements knowingly made to receive benefits Newton was not entitled to receive. He admitted as much at the hearing. Imposition of an administrative penalty is appropriate.

Von Behren imposed a disqualification until the end of Newton's benefits year. She based this on the current overpayment length, his five previous overpayments, and the fact that one was significant enough to have warranted sanctions.   IWD's rules afford the investigator discretion to determine the degree and severity of the penalty, based on

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[1] Iowa Code § 96.5(8).

[2] *Id.* § 96.5(8).

[3] 871 IAC 25.9(2)*c.*

[4] *Id.* 25.1.

[5] *Id.*

the nature of the offense and facts.[6] I cannot conclude von Behrens' imposition of an administrative penalty from February 17, 2013 through January 4, 2014 was in error. The applicable regulation states that the person shall be disqualified "for the week in which the department makes the [willful misrepresentation] determination . . . ." Here, von Behren acted immediately upon being referred the case and the administrative penalty ran from the time she made the misrepresentation determination.

IWD's decision should therefore be affirmed.

DECISION

IWD's decision dated February 22, 2013, reference 01, is AFFIRMED. IWD correctly imposed an administrative penalty disqualifying Newton from receiving unemployment insurance benefits from February 17, 2013 through January, 2014.

dbl

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[6] 871 IAC 25.9(2)*c.*