

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

DECISION OF THE ADMINISTRATIVE LAW JUDGE

KAELA M. BALIUS
1102 WADE STREET
DES MOINES IA 50315

IOWA WORKFORCE DEVELOPMENT
INVESTIGATIONS AND RECOVERY
KAREN VONBEHREN
150 DES MOINES STREET
DES MOINES IA 50309

JOE WALSH, IWD

Appeal Number: 12IWDUI515

OC: 9/9/12

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)

December 21, 2012

(Decision Dated & Mailed)

STATEMENT OF THE CASE

Kaela M. Balius filed an appeal from a decision issued by Iowa Workforce Development (the Department) dated September 27, 2012, reference 01. In this decision, the Department imposed an administrative penalty that disqualified Ms. Balius from receiving unemployment insurance benefits from September 23, 2012 through September 7, 2012.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals on October 17, 2012 to schedule a contested case hearing. A Notice of Telephone Hearing was mailed to all parties on October 31, 2012. On December 11, 2012, a telephone appeal hearing was held before Administrative Law Judge John M. Priester. Investigator Karen vonBehren represented the Department and presented testimony. Appellant Kaela Balius appeared and presented testimony. The administrative file was 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

Kaela Balius filed a claim for unemployment insurance benefits with an effective date of September 9, 2012. At some point after Ms. Balius filed this claim, the Department began investigating whether a previous overpayment incurred by Ms. Balius justified the imposition of an administrative penalty.

In 2011 and 2012, while Ms. Balius was receiving benefits on a prior claim, there were 27 weeks between September 2011 and April 21, 2012 when Ms. Balius' employer, TMS Management Group, reported that she earned wages. Ms. Balius did not fully report having earned wages during those weeks to the Department during the claims reporting process. Ms. Balius was overpaid a total of \$2,085.97 for the 27 weeks in question and the Department determined that the overpayment was a result of misrepresentation. Ms. Balius did not appeal that decision.

When the Department received notice that Ms. Balius had filed another claim effective September 9, 2012, Ms. Balius was sent a letter on September 20, 2012 explaining that the Department would be making a determination regarding whether to impose an administrative penalty that would disqualify her from receiving benefits for a set amount of time. The letter indicated that the administrative penalty was being considered based on Ms. Balius' failure to report wages earned with TMS Management Group. The Department gave Ms. Balius the opportunity to respond by mail by September 28, 2012 concerning the potential administrative penalty. Ms. Balius provided a letter explaining her financial circumstances and accepting responsibility for her actions.

Based on the circumstances of the 2011-2012 over payment, the Department made the decision to impose an administrative penalty disqualifying Ms. Balius from receiving unemployment insurance benefits from September 23, 2012 to September 7, 2013, the end of Ms. Balius' benefit year. Ms. vonBehren testified that the Department's internal manual provides for imposition of an administrative penalty through the end of an individual's benefit year when falsification occurs for nine weeks or more.

At hearing, Ms. Balius testified that she took full responsibility for her acts. She explained her dire financial situation-she is without a job and is pregnant. She is barely able to pay her rent and school is about to begin.

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.¹ 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.²

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.³

At hearing, Ms. Balius admitted that she misrepresented her employment status during the time period at issue in order to receive unemployment insurance benefits. While the financial circumstances she finds herself in are unfortunate, she committed a very serious act by falsifying her unemployment benefits for 27 weeks.

The Department's decision to impose an administrative penalty was correct and the length of the administrative penalty imposed in this case does not exceed the time period mandated in the Department's regulations.

DECISION

Iowa Workforce Development's decision dated September 27, 2012, reference 01, is **AFFIRMED**. The Department correctly imposed the administrative penalty. The Department shall take any action necessary to implement this decision.

jmp

¹ Iowa Code § 96.5(8) (2011).

² *Id.*

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