

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

DECISION OF THE ADMINISTRATIVE LAW JUDGE

KARL L. KRUSE
503 E. 5TH ST.
SPENCER, IA 51301-5020

IOWA WORKFORCE DEVELOPMENT
JENNIFER LARA, INVESTIGATOR

JONI BENSON, IWD

Appeal Numbers: 17IWDUI216
OC: 11/06/16
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)

March 23, 2017

(Decision Dated & Mailed)

Iowa Code section 96.4-3 – Ineligibility for Benefits

STATEMENT OF THE CASE

Claimant/Appellant Karl L. Kruse filed an appeal from a decision issued by Iowa Workforce Development (“IWD”) dated January 5, 2017, reference 01. IWD determined Kruse ineligible to receive unemployment insurance benefits because IWD’s records indicated Kruse made false statements concerning his employment and earnings and did so to receive unemployment insurance benefits from November 16, 2014 through April 4, 2015. IWD imposed an administrative penalty disqualifying Kruse from receiving unemployment insurance benefits from January 1, 2017 through November 4, 2017.

IWD transmitted the case to the Department of Inspections and Appeals on January 30, 2017 to schedule a contested case hearing. When IWD transmitted the case, it mailed a copy of the administrative file to Kruse.

On March 20, 2017 a contested case hearing was held. IWD Investigator Ms. Jennifer Lara appeared and testified on behalf of IWD. Appellant Kruse appeared and testified on his own behalf. Exhibits A – F were admitted into evidence without objection.

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

There is no dispute in this appeal that Karl L. Kruse was overpaid the net amount of \$2,000.00 in unemployment insurance benefits between November 16, 2014 through April 4, 2015. (Exhibits A3-A5). Kruse failed to notify IWD the correct wages that he received from H & S Roofing Company during that time period. This overpayment came to light when IWD conducted an audit because the employee's documentation did not match the employer's documentation as to Kruse's hours and wages for the weeks unemployment benefits were paid.

The Department notified Kruse through a preliminary audit notice dated September 29, 2015 that he was overpaid \$2,000.00. (Exhibits A5-A6, B3). The preliminary audit notice also informed Kruse that an overpayment "may result in denial of future benefits." (Exhibit A5). Kruse was also informed that he was subject to a 15% penalty resulting in an overall amount of \$2,300.00 due to IWD. (Exhibit B3). It appears Kruse did not appeal that decision and it has become final. (Exhibits A5-A6). Apparently, Kruse (or his employer) paid the \$2,300.00 on September 14, 2015. (Exhibit F1). In addition, Kruse testified at the hearing that he did not dispute he incorrectly reported wages from H & S Roofing Company. He also did not challenge IWD's calculations of the amount of overpayment, but did claim at one point that he did not earn as much income as reflected in the documentation. (Kruse Testimony).

The dispute in this appeal is whether IWD correctly applied an administrative penalty disqualifying Kruse from receiving unemployment benefits from January 1, 2017 through November 4, 2017. Kruse filed a new unemployment claim on November 6, 2016. (Exhibit C1). That new claim triggered a review of whether there was any overpayment within the last 36 months and whether there was any disqualification for a fraudulent overpayment. IWD sent Kruse a letter dated December 1, 2016, informing him of IWD's intent to disqualify Kruse for unemployment benefits for a period of time because of the prior false statements or misrepresentations. (Exhibit D1). Kruse

responded to this letter on December 17, 2017 and included evidence that he (or his employer) had paid the \$2,300.00 owed for the overpayment and the financial penalty. (Exhibit F1).

IWD imposed the disqualification sanction through its decision on January 5, 2017, reference 01, as an administrative penalty for Kruse's prior false statements from November 16, 2014 through April 4, 2015. (Exhibit E3). IWD imposed a disqualification period of 44 weeks – the remainder of the benefit year – for underreporting wages for a period of 15 weeks. (Exhibit E1).

Lara testified that IWD has shown Kruse's intent to misrepresent his wages because he has a history of underreporting wages to IWD. She noted that in addition to the time period at issue here, Kruse also underreported wages to IWD from December 29, 2013 to February 15, 2014. Kruse inquired why other employees receive unemployment insurance when they underreported like he did. Lara testified that IWD would investigate individuals if they have information of fraud. Additionally, audits are conducted randomly when a comparison is made between wages reported by the employer and the wages reported by a worker collecting benefits – this is called a “crossmatch system.” When an individual inputs their hours worked or their wages either by phone or online, they are to certify to the accuracy. (Lara Testimony). Kruse stated that he was told what hours to put down on his unemployment documentation by a staff person at H & S Roofing Company who was stealing from the company and later terminated. (Exhibit F1). Kruse also stated that others had done it and they were not disqualified from unemployment benefits. Finally, Kruse stated that he did not earn as much as IWD states he earned and does not know why he is disqualified because he has paid the money back to IWD.

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. Iowa Code § 96.5(8). 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. *Id.* “The degree and severity of penalty shall be determined at the discretion of the investigator and shall be based upon the nature of the offense and the facts.” Iowa Admin. Code r. 871-25.9(2)(c)(96).

In order to impose an administrative penalty, IWD must show that Kruse had the “intent to defraud” and that he did so in order to obtain “benefits not due under this chapter.” IWD must also show that Kruse “willfully and knowingly” made a “false statement or misrepresentation” or “willfully and knowingly failed to disclose a material fact” to obtain benefits Iowa Code § 96.5(8). Black's Law Dictionary defines “willfully and knowingly” as “[a]n act is done willfully and knowingly when the actor intends to do

it and knows the nature of the act. Deliberately.” *Black’s Law Dictionary* (6th Ed. 1990).

The record shows that Kruse provided false statements to IWD in order to obtain benefits over a 15-week period of time. This evinces an awareness and deliberateness on his part. Kruse did not challenge the misstatements and admitted to underreporting. Kruse stated that he was just doing what others did – entering numbers as told by the employer’s (former) staff member. That is not a defense to disqualification. The fact that others may deliberately misrepresent the number of hours worked and not be disqualified from benefits is also not a defense. *Cf. State v. Walker*, 236 N.W.2d 292, 295 (Iowa 1975) (“Defendants allege error on the ground they were singled out for prosecution. But it is well settled that selectivity in prosecution is not per se a constitutional violation. The constitution is not violated unless the selection is deliberately based on an unjustifiable standard, i.e., race, religion, or other arbitrary classification.”) (citations omitted); Iowa Code § 701.6 (“All persons are presumed to know the law. . . .”). Alternatively, Kruse may be arguing that he relied on IWD to catch the mistake and charge him for the overpayment when it was discovered. The system is not designed to work this way. It is dependent on the claimant making a diligent effort to provide correct wage information in the first place. IWD provided substantial evidence that Kruse willfully and knowingly made false statements in order to receive benefits. The administrative penalty imposed in this case appears to meet the requirements of the statute.

The final question is whether the investigator’s disqualification determination, because Kruse routinely underreported wages over a 15-week period of time, merited a 44-week sanction. The 44-week disqualification sanction for the remainder of Kruse’s benefit year is permissible. Iowa Admin. Code r. 871-25.9(2)(b)(96). (“The administrative penalty recommended for falsification ranges from three weeks through the end of the benefit year.”). If this was the first instance of overpayment for Kruse, a reduction of the disqualification period would result. However, Kruse also underreported wages to IWD from December 29, 2013 to February 15, 2014. “If the same offense is repeated, loss of benefits through the end of the benefit year will result.” Accordingly, the disqualification sanction must be affirmed.

DECISION

IWD’s decision to impose an administrative penalty that would disqualify Kruse from receiving unemployment benefits from January 1, 2017 through November 4, 2017 is affirmed.