

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

Appeal Number: 05-IWDUI-030
OC: 01/02/05
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.

KEVIN P SWITZER
530 SOUTH PLANE STREET
BURLINGTON IA 52601

STATE CLEARLY

INVESTIGATIONS AND RECOVERY
IOWA WORKFORCE DEVELOPMENT
1000 EAST GRAND AVENUE
DES MOINES IA 50319-0209

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.

Dan Anderson, IWD

(Administrative Law Judge)

February 25, 2005

(Decision Dated & Mailed)

Section 96.5-8 - Administrative Penalty
871 IAC 25.9(2) - Penalties

STATEMENT OF THE CASE:

The claimant filed an appeal from an Iowa Workforce Development Department decision dated January 21, 2005, reference 02, which disqualified the claimant from receiving benefits for a period from January 16, 2005 to February 26, 2005, due to a prior overpayment based on misrepresentation.

The hearing was held pursuant to due notice on February 17, 2005, by telephone conference call. The claimant participated. Karen von Behren, Investigator, participated on behalf of Iowa Workforce Development, Investigations and Recovery. Department Exhibit One was received as evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, finds: The claimant was the subject of an audit and investigation on his claim for benefits effective January 4, 2004. A representative of Iowa Workforce Development issued a decision that the claimant was over paid benefits \$720.00 due to misrepresentation on September 1, 2004. The decision was not appealed, and it has now become final.

When the claimant filed his most recent claim effective January 2, 2005, a department representative notified Investigator von Behren who set-up an interview with the claimant on January 20, 2005. The claimant did not respond and report for the interview.

The claimant incurred the \$720 overpayment due to misrepresentation over a period of 3-weeks by failing to report his work and wages with Mike Nelson Concrete. The claimant had an arrangement with his employer to "bank hours" and be paid in a future week where he did not work. However, when the claimant filed for unemployment, he answered no to the question whether he worked for the 3-weeks at issue when he knew he had.

The department has a policy guideline of imposing a penalty ranging from 5-weeks to 12-weeks in a situation comparable to the claimant's overpayment. Investigator von Behren imposed a penalty period of 6-weeks that represents 2-weeks of penalty for each of the 3-weeks the claimant incurred the \$720 overpayment. The claimant made no personal repayment of the overpayment, but it was paid in full and satisfied by an offset procedure on his current claim.

The claimant is requesting that the penalty period be reduced due to financial hardship. The claimant is blaming the department for investigating the wage matter with his employer, and hurting his chances for re-employment. Although the claimant questioned the wage audit reports used to determine his overpayment, he did not keep any pay records to refute the information.

REASONING AND CONCLUSIONS OF LAW:

The 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 is correct 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 6-week period of disqualification imposed by the department is within the administrative penalty discretion of the law.

Given the department policy range of imposing a penalty anywhere from five to twelve weeks, the six-week penalty issued in this matter is relatively light given the circumstances. During the hearing, the claimant blamed the department and his employer for the overpayment situation, but he filed no appeal from the decision, and he did not appear for a scheduled interview to explain his position. In addition, the claimant made no attempt to repay any portion of the overpayment from the time the decision was issued on September 1, 2004 until the department began collecting it by an offset procedure when he filed a recent unemployment claim on January 2, 2005.

In summary, there is a lack of mitigating circumstances to lower or otherwise modify the department penalty.

DECISION:

The decision of Iowa Workforce Development dated January 21, 2005, reference 02, is AFFIRMED. The claimant is disqualified from receiving benefits for the 6-week period ending February 26, 2005. The claimant is entitled to receive benefits effective February 27, 2005, provide he is otherwise eligible.

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