

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

DECISION OF THE ADMINISTRATIVE LAW JUDGE

**DAMIR SABIC**  
**1222 Cornwall Ave.**  
**Waterloo, IA 50702**

**IOWA WORKFORCE DEVELOPMENT**  
**Jenny Lara**

JONI BENSON, IWD

**Appeal Numbers: 15IWDUI018**

**OC: 12/14/14**

**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, 4<sup>TH</sup> 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.

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(Administrative Law Judge)

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February 10, 2015

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(Decision Dated & Mailed)

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

**STATEMENT OF THE CASE**

Claimant/Appellant Damir Sabic filed an appeal from a decision issued by Iowa Workforce Development (“IWD”) dated December 31, 2014, reference 01. IWD determined Sabic was ineligible to receive unemployment insurance benefits because IWD’s records indicated Sabic made false statements concerning his employment and earnings and did so to receive unemployment insurance benefits from November 10, 2013, through May 3, 2014. IWD imposed an administrative penalty disqualifying Sabic from receiving unemployment insurance benefits from December 28, 2014 through May 16, 2015.

IWD transmitted the case to the Department of Inspections and Appeals. On February 9, 2015 a contested case hearing was held. Jenny Lara appeared and testified on behalf of IWD. Damir Sabic appeared and testified on his own behalf. Exhibits A –C 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 Damir Sabic has received two separate overpayments from IWD. The first was for a total of \$1,233 for eight weeks between November 10, 2013 and May 3, 2014. The other was for \$1,671 for five weeks between January 1, 2012 and February 11, 2012. Sabic did not appeal from either of these overpayment decisions.

When Lara reviewed these overpayments she determined them to be the result of misrepresentation and that Sabic had made false statement to receive the benefits to which he was not otherwise entitled. With regard to the first overpayment, she received a statement from Sabic admitting that he had guessed his hours when reporting them. He also admitted that he had received the Guide for Unemployment and understood it. With regard to the earlier overpayment, he gave a statement admitting that “I was behind on my bills so I claimed UI benefits for those weeks.”

Based on her determination that Sabic had made false misrepresentations in order to receive benefits, Lara considered whether an administrative penalty s should be ordered. On December 29, 2014 she sent a letter to Sabic informing him that he would receive an administrative penalty. On December 31, 2014 IWD issued a Notice of Decision that Sabic would be disqualified from receiving any benefits for a total of 20 weeks from December 28, 2014 through May 16, 2015. As Lara explained at the subsequent hearing, this was based on guidance from IWD’s Investigation and Recovery Manual stipulating a penalty of at least 20 weeks because Sabic had two separate overpayments based on misrepresentation.

Sabic testified that he is the only one in the family working and he has to support four children and a wife. He admitted the overpayments, but would like to not have the 20 week disqualification.

### **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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

Sabic does not contest the fact that he failed to accurately report his wages to IWD twice for an extended period of time. He gave no reason for the false claims other than the need to pay bills and that he was guessing on his earnings. It is true that Sabic has repaid the amount he was overpaid. IWD, however, could reasonably determine that an administrative penalty in the form of ineligibility for unemployment benefits should be imposed to discourage future false claims. Simply allowing the claimant to repay the amount incorrectly paid would not serve as a disincentive.

Iowa Code section 96.5 (8) places limits on the Department's ability to impose an administrative penalty. The Department must first show that Sabic had the "intent to defraud" and that he did so in order to obtain "benefits not due under this chapter." The Department must also show that Sabic "willfully and knowingly" made a "false statement or misrepresentation" or "willfully and knowingly failed to disclose a material fact" to obtain benefits. IWD's evidence on this issue consisted of the two un-appealed overpayment decisions and the statements from Sabic given in the course of the investigation of those two cases. In one statement he admitted that claimed benefits because he was behind on his bills. In the second he admitted that he had guessed at his earnings.

Black's Law Dictionary defines knowing as "having or showing awareness or understanding" and "deliberate; conscious."<sup>4</sup> Willful is defined as "voluntary and intentional, but not necessarily malicious."<sup>5</sup> The record shows that Sabic provided false statements to the department in order to obtain benefits over an extended period of time. This evinces an awareness and deliberateness on his part. The department provided substantial evidence that Sabic 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.

## DECISION

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<sup>1</sup> Iowa Code § 96.5(8).

<sup>2</sup> *Id.* § 96.5(8).

<sup>3</sup> 871 IAC 25.9(2) *c.*

<sup>4</sup> *Black's Law Dictionary* (7th Ed. 1999).

<sup>5</sup> *Id.*

**IWD's decision to impose an administrative penalty that would disqualify Sabic from receiving unemployment benefits from December 28, 2014 through May 16, 2015 is affirmed.**