

## FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses, 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 June 29, 2008. A representative of Iowa Workforce Development issued a decision that the claimant was over paid benefits \$1,505.00 due to misrepresentation on November 19, 2008. The decision was not appealed, and it has now become final.

When the claimant filed his most recent, additional claim effective December 14, 2008, a department representative notified Investigator Lewis. Prior to initiating a review procedure, the claimant inquired about his claim status, and he was referred to Lewis for an interview on January 7, 2009.

When Lewis asked claimant why he did not report his wages during a 5-week period from September 14, 2008 to October 18, 2008, the claimant responded that he didn't believe he needed to report part-time work. When asked why he answered no to the question whether he worked the week claimed, he thought he must have misunderstood. The claimant made no attempt to voluntarily re-pay the overpayment. The department guideline is to impose a penalty ranging from 8 to 20 weeks when there is a misrepresentation-overpayment of five or more weeks.

The claimant failed to respond to the hearing notice.

## REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the claimant is able and available for work.

### **Iowa Code Section 96.4-3 provides:**

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work.

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

**DECISION:**

The decision of Iowa Workforce Development dated January 8, 2009, reference 04, is **AFFIRMED**. The claimant is disqualified from receiving benefits for the 5-week period ending October 18, 2009.

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