

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

DECISION OF THE ADMINISTRATIVE LAW JUDGE

BRIAN BECK
718 1ST AVE.
GRINNELL, IA 50112-2219

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

JOE WALSH, IWD

Appeal Number: 12IWDUI046
OC: 2/27/11
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 27, 2012

(Decision Dated & Mailed)

STATEMENT OF THE CASE

Brian Beck filed an appeal from a decision issued by Iowa Workforce Development (the Department) dated October 27, 2011, reference 05. In this decision, the Department imposed an administrative penalty that disqualified Beck from receiving unemployment insurance benefits from October 23, 2011 through January 14, 2012.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals on January 13, 2012 to schedule a contested case hearing. A Notice of Telephone Hearing was mailed to all parties on January 18, 2012. On February 28, 2012, a telephone appeal hearing was held before Administrative Law Judge Laura Lockard. Investigator Corey Watt represented the Department and presented testimony. Appellant Brian Beck appeared and presented testimony.

Exhibits A through J were submitted by the Department and 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

Brian Beck filed a claim for unemployment insurance benefits with an effective date of February 27, 2011. At some point after Beck filed this claim, his account was flagged and his case forwarded to Department investigator Corey Watt to make a determination regarding whether a previous overpayment incurred by Beck justified the imposition of an administrative penalty. (Watt testimony; Exh. F).

In 2010, while Beck was receiving benefits on a prior claim, there were three weeks in May when Beck's employer, Blacktop Service Company, reported that he earned wages. Beck did not report having earned wages during those weeks to the Department during the claims reporting process. In response to the questions posed during the automatic claims reporting process during those weeks, Beck indicated that he did not work. Beck was overpaid a total of \$1,239 for the three weeks in question and the Department determined that the overpayment was a result of misrepresentation. (Exh. G, I; Watt testimony).¹

When the Department initially investigated the potential overpayment, Beck was given an opportunity to report to his local Workforce Development office to discuss the discrepancy in reported wages and to produce any earnings records. Beck did not contact the Department at that time to discuss the reasons for the discrepancy in reported wages. (Watt testimony; Exh. H).

When Watt received notice that Beck had filed another claim effective February 27, 2011, he mailed Beck a letter on October 4, 2011 explaining that the Department would be making a determination regarding whether to impose an administrative penalty that would disqualify him from receiving benefits for a set amount of time. The letter indicated that the administrative penalty was being considered based on Beck's failure to report wages earned with Blacktop Service Company from April 25 through May 15, 2010. (Exh. F). Along with the letter, Watt mailed copies of the previous overpayment decision and the documents the Department relied upon to determine there was an overpayment. (Watt testimony). The Department gave Beck the opportunity to respond by mail by October 18, 2011 concerning the potential administrative penalty. (Exh. F). Beck did not make any contact with the Department to discuss the issue prior to the deadline. (Watt testimony).

¹ While the Department's decision does not specifically state that the overpayment was the result of misrepresentation, the decision states that it was made under section 96.16(4) of the Iowa Code. That section relates to overpayments made as a result of misrepresentation and the consequences the Department may impose.

Based on the circumstances of the 2010 overpayment, the Department made the decision to impose an administrative penalty disqualifying Beck from receiving unemployment insurance benefits for a twelve-week period between October 23, 2011 and January 14, 2012. Watt testified that the Department's internal guidelines provide that for three weeks of misrepresentation the administrative penalty should be between five and 12 weeks. (Watt testimony).

In his appeal letter, Beck states that he is appealing the Department's decision because he has already paid back the overpayment. (Exh. A). Beck's unemployment insurance benefits have been withheld in order to recoup the overpayment. (Watt testimony). At hearing, Beck acknowledged that he made false statements in order to obtain unemployment insurance benefits. He apologized to everyone involved and stated that he realizes what he has done and just wants to go forward. (Beck testimony).

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.² 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.³

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.⁴

At hearing, Beck admitted that he had made false statements in order to obtain unemployment insurance benefits. The fact that the overpayment has been repaid from Beck's unemployment insurance benefits has no bearing on whether the Department was correct in imposing an administrative penalty. An administrative penalty is based upon the false statements that resulted in an overpayment; the fact that a claimant has repaid any monies owed after the overpayment was discovered does not mitigate against imposing an administrative penalty. 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.

² Iowa Code § 96.5(8) (2011).

³ *Id.*

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

DECISION

Iowa Workforce Development's decision dated October 27, 2011, reference 05, is **AFFIRMED**. The Department correctly imposed the administrative penalty. The Department shall take any action necessary to implement this decision.

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