

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

Appeal Numbers: 13IWDUI588-589
OC: 04/07/13
Claimant: Appellant (1)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

RICHARD B. STEVENS
5004 TAMARA LANE
WEST DES MOINES, IA 50265-6911

IOWA WORKFORCE DEVELOPMENT
IRMA LEWIS, INVESTIGATOR

JONI BENSON, IWD
TERESA K. HILLARY, IWD

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.

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)

January 28, 2014

(Dated and Mailed)

Iowa Code §96.6-2 – Timeliness of Appeal
Iowa Code §96.3(7) – Recovery of Overpayment Benefits
Iowa Code §96.16-4 – Misrepresentation
Iowa Code §96.5(8) – Administrative Penalty
Iowa Code §96.4-3 – Unemployment Insurance Benefits Eligibility

STATEMENT OF THE CASE

Claimant/Appellant Richard Stevens appealed a decision issued by Respondent Iowa Workforce Development (IWD) on December 3, 2013, reference 03, finding he was ineligible to receive unemployment insurance benefits for a certain time period because he made false statements concerning his employment and earnings, and imposing an administrative penalty. The appeal deadline for this decision was December 13, 2013.

Stevens filed and mailed an appeal letter, postmarked on December 13, 2013. The appeal was received in the IWD Appeals Section on December 16, 2013.

IWD issued a Notice of Decision on November 22, 2013, assessing an overpayment in the amount of \$792, because Richard Stevens failed to report wages he earned from Olympic Companies Inc. during the weeks of June 9, 2013 through June 22, 2013. The appeal deadline for this decision was December 2, 2013.

On December 18, 2013, IWD transmitted the case to the Department of Inspections and Appeals to schedule a contested case hearing. When IWD transmitted the case, it mailed a copy of the appeal file to Mr. Stevens, to the address on file.

On December 26, 2013, a Notice of Telephone Hearing was mailed to Richard Stevens at the address on file with IWD, the address he provided with his appeal letter, 5004 Tamara Lane, West Des Moines, IA 50265-6911. The contested case hearing was scheduled for January 27, 2014 at 9:30 a.m. Richard Stevens did not appear for the hearing at 9:30 am. Irma Lewis appeared and testified on behalf of IWD. Exhibits 1 through 14 and A-C were admitted into the record.

ISSUES

1. Whether the Claimant filed a timely appeal.
2. Whether IWD correctly determined that the Claimant was overpaid unemployment insurance benefits, and, if so, whether the overpayment was correctly calculated.
3. Whether IWD correctly determined the overpayment was a result of misrepresentation.
4. Whether IWD correctly determined the Claimant is ineligible to receive unemployment insurance benefits.
5. Whether IWD correctly imposed an administrative penalty on the basis of false statements made by the Claimant.

FINDINGS OF FACT

Mr. Stevens received unemployment insurance benefits through Iowa Workforce Development (IWD), in 2012 and again in 2013. He received the "Facts for Workers Guide" via regular mail in 2012, and through the local IWD office in 2013. (Exhibits B1-B4; Lewis testimony) This guide included these instructions, in pertinent parts: "To be eligible for benefits you must (1) be totally or partially unemployed. (11) Report all earnings before deductions when earned, not when paid. (18) Understand that attempting to claim and receive benefits fraudulently can result in loss of benefits, repayment of benefits, fines and/or imprisonment." (Exhibits C-1, C-2; Lewis testimony)

Unemployment insurance benefit recipients are required to call in or log in each week, and are required to answer a series of questions. (Lewis testimony)

Richard Stevens called in to the voice response unit on June 15, 2013 at 10:54 am, and answered, "No" to the question, "Did you work?" (Lewis testimony) Richard Stevens worked 32 hours during that week, on June 10, 11, 12 and 13. (Exhibit 10) He earned \$827 in wages that week. (Exhibit 9)

Richard Stevens called in to the voice response unit on June 22, 2013 at or about 9:12 am, and answered, “No” to the question, “Did you work?” (Lewis testimony) Richard Stevens worked 40 hours during that week, on June 17, 18, 19, 20 and 21. (Exhibit 10) He earned \$999 in wages that week. (Exhibit 9)

On November 4, 2013, IWD issued a preliminary audit notice to Richard Stevens, giving him an “opportunity to respond concerning the discrepancy” between his reported claim and the wages his employer reported. The deadline for any such response was November 19, 2013. (Exhibit 8, A-5) He did not respond to this notice. (Lewis testimony; Exhibit A-1)

On November 19, 2013, IWD’s investigator, Irma Lewis, sent a letter to Richard Stevens, giving him another opportunity to respond concerning his failure to report his employment and earned wages. (Exhibit A-2) This letter included copies of documents substantiating the potential overpayment. (Exhibit A-2; Lewis testimony) The deadline for any such response was November 29, 2013. (Exhibit A-2) He did not respond to this notice. (Lewis testimony; Exhibit A-1) This letter notified Mr. Stevens that IWD would determine whether or not to assess an administrative penalty against him, because he gave false information on prior claims. (Exhibit A-2)

On December 3, 2012, IWD issued a decision, reference 04, finding that Richard Stevens was overpaid on his unemployment insurance claim, in the amount of \$1155, for three weeks between 05/13/2012 and 06/02/2012, because he failed to report wages he earned with Olympic Companies Inc. (Exhibit A-3) He did not appeal that decision. (Lewis testimony)

On November 22, 2013, IWD issued a decision, reference 02, finding that Richard Stevens was overpaid on his unemployment insurance claim, in the amount of \$792, for two weeks between 06/09/2013 and 06/22/2013, because he failed to report wages he earned with Olympic Companies Inc. (Exhibit 6, A-4) The decision states, in part, “THIS DECISION BECOMES FINAL UNLESS AN APPEAL IS POSTMARKED BY 12/02/13, OR RECEIVED BY THE IOWA WORKFORCE DEVELOPMENT APPEAL SECTION BY THAT DATE.” (Exhibit 6). He did not appeal this decision by the deadline. (Lewis testimony)

Mr. Stevens’ first appeal letter was postmarked December 13, 2013. It was received in the IWD Appeals Section on December 16, 2013. (Exhibits 4-5)

On December 3, 2013, IWD issued a decision, reference 03, imposing an administrative penalty, because Richard Stevens made false statements concerning his employment and earnings, in 2012 and again in 2013. (Exhibit 14) This administrative penalty disqualifies him from receiving unemployment insurance benefits from 11/24/13 until 04/12/14, a period of twenty weeks. (Exhibit 14, Lewis testimony) The decision states, in part, “THIS DECISION BECOMES FINAL UNLESS AN APPEAL IS POSTMARKED BY 12/13/13, OR RECEIVED BY THE IOWA WORKFORCE DEVELOPMENT APPEAL SECTION BY THAT DATE.” (Exhibit 14).

Mr. Stevens' appeal letter was postmarked December 13, 2013. It was received in the IWD Appeals Section on December 16, 2013. (Exhibits 4-5)

REASONING AND CONCLUSIONS OF LAW

Timeliness of Appeals

Iowa Code §96.6(2) requires a claimant to file an appeal of IWD's decision "within ten calendar days after notification was mailed to the claimant's last known address." The Iowa Supreme Court has determined that a timely appeal is both mandatory and jurisdictional.¹

These administrative appeal files include two decisions. In the decision dated November 22, 2013, reference 02, IWD found Richard Stevens was overpaid on his unemployment insurance claim in the amount of \$792, for two weeks between 06/09/2013 and 06/22/2013, because he failed to report wages he earned with Olympic Companies Inc. (Exhibit 6, A-4). He did not appeal that decision in a timely manner. The record in this matter does not include any documents to indicate that he appealed this decision within ten days of the date it was issued.

In the decision dated December 3, 2013, reference 03, IWD imposed an administrative penalty because it found Richard Stevens made false statements concerning his employment and earnings in 2012 and 2013. (Exhibit 14) The appeal deadline for this decision was December 13, 2013. Stevens' appeal letter, which was postmarked on 12/13/13, was timely filed for that decision.

Richard Stevens did not file a timely appeal from the November 22, 2013 decision. If his December 13, 2013 appeal letter could be considered as an appeal from that decision, it is well beyond the December 2, 2013, deadline. Because he did not file a timely appeal from the November 22, 2013 decision, I do not have jurisdiction to consider whether IWD correctly determined that Richard Stevens was overpaid in the amount of \$792 because he failed to report wages he earned with Olympic Companies Inc.

Overpayment claim - Misrepresentation

When IWD determines an individual who received unemployment benefits was ineligible to receive benefits, IWD must recoup the benefits received, whether or not the individual acted in good faith and was not otherwise at fault.² In this case, IWD determined the overpayments occurred because of misrepresentation.³

IWD may, in its discretion, recover the overpayment either by deducting a sum equal to the overpayment from any future benefits payable to the individual, or by collecting a sum equal to the overpayment directly from the individual.⁴

¹ *Beardslee v. Iowa Dep't of Job Servs.*, 276 N.W.2d 373, 377 (Iowa 1979).

² Iowa Code §96.3(7) (2013).

³ Iowa Code §96.16(4) (2013)

⁴ Iowa Code §96.3(7) (2013).

Stevens did not appeal the November 22, 2013 decision in a timely manner. As stated above, I do not have jurisdiction to consider the overpayment decision.

Administrative Penalty and Eligibility for Benefits

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.⁵ 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.⁶ 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.⁷

IWD's rules define intent as "the design, resolve, or determination with which an individual or group of individuals acts in order to reach a preconceived objective."⁸ Fraud is defined as "the intentional misuse of facts or truth to obtain or increase unemployment insurance benefits for oneself . . . ; a false representation of a matter of fact, whether by statement or by conduct, by false or misleading statements or allegations; or by the concealment or failure to disclose that which should have been disclosed, which deceives and is intended to deceive another so that they, or [IWD], shall not act upon it to their, or its, legal injury."⁹

The statute defines the term knowingly as "having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the requirement or prohibition involved."¹⁰

IWD's rules afford the investigator discretion to determine the degree and severity of the penalty, based on the nature of the offense and facts.¹¹ The IWD investigator presented sufficient evidence to substantiate the administrative penalty. The evidence clearly shows that Richard Stevens willfully and knowingly made false statements or misrepresentations, and willfully and knowingly failed to disclose material facts, with the intent to defraud by obtaining benefits he was not entitled to. IWD's decision imposing an administrative penalty and finding Richard Stevens is ineligible to receive unemployment benefits for a twenty week period must be affirmed.

⁵ Iowa Code §96.5(8).

⁶ Iowa Code §96.5(8).

⁷ 871 IAC 25.9(2)c.

⁸ 871 IAC 25.1.

⁹ 871 IAC 25.1.

¹⁰ Iowa Code §96.16(5)b (1) defines knowingly for purposes of the subsection as "having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the requirement or prohibition involved."

¹¹ 871 IAC 25.9(2)c.

DECISION

Mr. Stevens failed to timely file his appeal from the decision issued on November 22, 2013, regarding the overpayment of \$792. IWD's decision, dated November 22, 2013, reference 02, is therefore AFFIRMED.

IWD's decision dated December 3, 2013, reference 03, concluding Richard Stevens was not eligible to receive unemployment benefits for twenty weeks, and imposing an administrative penalty from 11/24/13 until 04/12/2014, because he made false statements concerning his employment and earnings, is AFFIRMED.

egc