

Ronald K. Kates
105 East Hammond Street
Red Oak, IA 51566

V.

Respondent.

ADMINISTRATIVE LAW JUDGE DECISION

OC:03/17/17
Claimant: Appellant (1)

STATEMENT OF THE CASE

IWD transmitted this case to the Department of Inspections and Appeals on May 10, 2017, to schedule a contested case hearing. When IWD transmitted the case, it mailed a copy of the administrative file to Kates. Prior to the hearing, Investigator Kasandra Ellenwood from IWD requested a continuance as she was not available for hearing on the date and time scheduled. Appellant voiced no objection and the parties agreed to a new date and time. Prior to hearing, Ellenwood submitted exhibits A through E to Kates and to the undersigned.

On July 14, 2017, a contested case hearing was held before Administrative Law Judge Tricia A. Johnston. Kates appeared and testified. Ellenwood appeared and testified on behalf of IWD. Exhibits A through E were admitted into the record.

Whether Iowa Workforce Development properly decided to impose an administrative penalty disqualifying Ronald Kates from receiving unemployment insurance benefits

because he made false statements concerning his employment and earnings in order to receive unemployment insurance benefits.

FINDINGS OF FACT

On January 3, 2016, IWD issued a decision finding Ronald Kates was overpaid on his unemployment insurance claim in the amount of \$4,984.26 for 13 weeks between April 20, 2014 and June 13, 2015. In addition to this overpayment, the Department determined the overpayment was the result of misrepresentation and imposed a 15% penalty. (Exhibit B) Kates did not appeal from that decision. When that decision became final, a “flag” was placed in his file that would alert workers to any future unemployment claims so that an administrative penalty could be imposed. (Ellenwood testimony)

On January 1, 2017, Kates made a new claim for benefits and the “flag” was tripped, alerting IWD to the possible need to impose an administrative penalty. A letter was subsequently mailed to Kates on March 9, 2017, informing him of this possibility and giving him the opportunity to respond. (Exhibit C)

Kates spoke with Investigator Kasandra Ellenwood on March 16, 2017. He stated he knew his overpayment was because he messed up but he wouldn't do it again. He thought since he paid back the overpayment it was taken care of. He originally took the unemployment money because he was behind on his bills. (Exhibit C-2; Ellenwood testimony)

When Ellenwood considered the matter, she determined that Kates should be ineligible for the remainder of his benefit year, which totaled 43 weeks. She did this because the substantially underreported wages, made over a period of 13 weeks resulting in an overpayment of \$4,984.26, showed an intent to misrepresent Kates' wages. In addition, Kates had two previous overpayments in Nebraska. Accordingly, the March 17, 2017 Decision informed Kates that due to his false statements he would be ineligible for benefits from March 12, 2017 through January 6, 2018, which is the end of his benefit year. (Exhibit E; 3/17/17 decision Ref. 01)

At the appeal hearing, Kates wanted to know why this penalty wasn't imposed the prior year. He did not remember the Nebraska overpayments and couldn't recall the reason for those overpayments. Kates felt the penalty should not be imposed because he paid back the overpayment. He acknowledged he made a mistake by not reporting his wages. (Kates testimony)

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 to which the person is not entitled.¹ 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.² 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.³

Kates made no attempt to contest the fact that he failed to accurately report his wages to IWD for 13 weeks or that consequently he was overpaid unemployment benefits. Moreover, the record shows that he had two prior overpayments in Nebraska that he did not deny. Kates stated he could not remember how he incurred those overpayments.

Iowa Code section 96.5 (8) places limits on the Department's ability to impose an administrative penalty. The Department must first show that Kates 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 Kates "willfully and knowingly" made a "false statement or misrepresentation" or "willfully and knowingly failed to disclose a material fact" to obtain benefits.

Black's Law Dictionary defines knowing as "having or showing awareness or understanding" and "deliberate; conscious."⁴ Willful is defined as "voluntary and intentional, but not necessarily malicious."⁵ The record shows that Kates failed to disclose a material fact 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 Kates willfully and knowingly failed to report income he was earning in order to receive benefits. Furthermore, the most recent claim was made within 36 months of the final under-report of wages. The administrative penalty imposed appears to meet the requirements of the statute.

DECISION

IWD's decision to impose an administrative penalty that would disqualify Kates from receiving unemployment benefits from March 12, 2017 through January 6, 2018 is affirmed.

Dated and mailed this July 31, 2017.



Tricia A. Johnston
Administrative Law Judge

¹ Iowa Code § 96.5(8) (2015).

² *Id.* § 96.5(8).

³ 871 Iowa Administrative Code (IAC) 25.9(2)c.

⁴ *Black's Law Dictionary* (7th Ed. 1999).

⁵ *Id.*

cc: Kasandra Ellenwood, IWD (By Email)
Jodi Douglas, IWD (By Email)
Emily Chafa, IWD UI Appeals Manager (By Email)
Nicholas Olivencia, IWD (By Email)
Joni Benson, IWD (By Email)

APPEAL RIGHTS

This decision shall become final agency action unless the Appellant or any interested party appeals to the Employment Appeal Board within fifteen (15) days after the date of this decision by submitting a signed letter or a signed written Notice of Appeal by mail, personal delivery, or fax to:

Employment Appeal Board
Lucas State Office Building, 4th Floor
Des Moines, Iowa 50319
(515) 281-7191 (fax)

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.

An appeal to the Employment Appeal Board must:

- Include the name, address, and social security number of the claimant;
- Reference the decision from which the appeal is taken;
- Clearly state that an appeal from such decision is being made;
- Clearly state the grounds upon which such appeal is based; and
- Be signed by the party appealing.

On appeal to the Employment Appeal Board, the Appellant may represent himself or herself or may obtain the assistance of an attorney or another representative at the Appellant's own expense. The Appellant may qualify for free legal assistance from Iowa Legal Aid. To apply, call Iowa Legal Aid at **(800) 532-1272** or visit **www.iowalegalaid.org**. More information about obtaining legal advice is also available on the Administrative Hearings Division website at **<http://dia.iowa.gov/ahd/>**. The claimant should continue to file weekly claims for unemployment insurance benefits while the appeal is pending. A claimant can only receive benefits for the weeks he or she filed a valid claim.