

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

DECISION OF THE ADMINISTRATIVE LAW JUDGE

HOMER L. CUTTLER
1452 4TH STREET
DES MOINES, IA 50314

IOWA WORKFORCE DEVELOPMENT
MICHELLE SADORIS, INVESTIGATOR

JONI BENSON, IWD
JODI DOUGLAS, IWD
NICHOLAS OLIVENCIA, IWD
EMILY CHAFA, UI APPEALS MANAGER

Appeal Number: 16IWDUI094
OC: 01/31/16
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 31, 2016

(Decision Dated & Mailed)

STATEMENT OF THE CASE

Homer Cuttler filed an appeal from a decision issued by Iowa Workforce Development (the Department) dated February 16, 2016. In that decision, the Department imposed an administrative penalty that disqualified Cuttler from receiving unemployment insurance benefits from October 4, 2015 through March 19, 2016.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals on December 9, 2015 to schedule a contested case hearing. A Notice of Telephone Hearing was mailed to all parties on March 16, 2016. On March 30, 2016, the telephone appeal hearing commenced before Administrative Law Judge Maria Brownell.

Investigator Michelle Saddoris represented the Department. Appellant Homer Cuttler appeared and presented testimony. Exhibits A through E were submitted by the Department and admitted into the record as evidence.

ISSUE

The issues in this appeal are whether the Department correctly determined the claimant is ineligible to receive unemployment insurance benefits, and whether the Department correctly imposed an administrative penalty on the basis of false statements made by the Appellant.

FINDINGS OF FACT

Homer Cuttler first filed for unemployment insurance benefits effective January 31, 2016. Prior to this claim, he had claimed unemployment on December 30, 2012. (Exh. A11). During the 16 weeks between June 2, 2013 through October 26, 2013, Cuttler stated he was not working and claimed unemployment insurance benefits. He admits these claims were false at the time he made them. (Cuttler testimony; Exh. A11). In fact, Cuttler was working at Automatic Beverage Co., Inc. at the time he claimed unemployment. He was burdened by debt at the time and needed assistance. (Cuttler testimony). The Department's records of claims paid to Cuttler indicated he received \$5,436.00 due to his false statements. (Exh. A2).

Another IWD investigator investigated the 2013 claims. In November 2013, the investigator spoke to Cuttler. Cuttler admitted to wrongdoing, and agreed to repay the overpayment plus a 15% penalty. He agreed to pay \$125 every other week beginning December 20, 2013, until the overpayment was repaid. (Exhs. A11, A12). Cuttler admits to missing payments throughout the time he was obliged, including four consecutive payments in 2015. (Saddoris testimony; Cuttler testimony). He contacted the local IWD office on one occasion in the fall of 2015 to report that he intended to make a payment in the future. (Saddoris testimony).

IWD Investigator Michelle Saddoris was assigned to Cuttler's case to investigate a potential penalty imposition due to misrepresentation and overpayment during the June through October 2013 period. (Exh. A2). On February 5, 2016, Saddoris prepared and sent Cuttler a letter regarding IWD's intention to impose a penalty period that would disqualify him from receiving benefits for a period of time due to his previous misreporting. The letter gave Cuttler the opportunity to respond by or before February 19, 2016. She also included documents substantiating the overpayment claim, such as the notes with his admission to wrongdoing from his meeting with another IWD investigator in November 2013 and his agreement to reimburse IWD for overpayment dated November 26, 2013. (Exhs. A2-A12).

On February 11, 2016, Cuttler responded with a letter. He admitted that the statement showing he still owed IWD over \$3000 in overpayment reimbursement due to his misrepresentation was correct. He asked that he be allowed to continue to receive benefits because he did not have a job or income. (Exh. B2).

Cuttler was honest and responsive about his prior misdeed in reporting. However, based on the fact that he had claimed 16 weeks of unemployment illegally, and had missed the remainder of his 2015 reimbursement installments, Saddoris exercised her discretion to disqualify him for the remainder of the benefit year. (Saddoris testimony; Exh. F-2). She issued a decision on February 16, 2016, disqualifying him from receiving benefits until January 28, 2017. On appeal, Cuttler asks that the disqualification period be reduced to allow him to get back on his feet and in a position where he can repay his prior overpayment obligation. (Cuttler 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.¹ 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.²

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.³ The Iowa Administrative Code does not provide more specific penalty range, but Saddoris utilized her judgment guided by standards from Investigation and Recovery Handbook for determining what the penalty should be, if a penalty is imposed. (Exh. E2; Saddoris testimony).

There is no dispute in this case that Cuttler worked and earned wages during 16 weeks that he claimed unemployment insurance benefits and reported to the Department through its claims system that he did not earn any wages. The evidence in this record establishes that Cuttler willfully and knowingly failed to report a material fact, specifically, that he was earning wages, with the intent to obtain unemployment insurance benefits to which he was not entitled. While his honesty is commendable and encouraged, it is not enough to overcome a penalty. In addition, I am sympathetic to Cuttler's financial strains, and am not blind to the weight that this decision adds to his shoulders on a daily basis.

¹ Iowa Code § 96.5(8) (2015).

² *Id.*

³ 871 Iowa Admin. Code r. 25.9(2).

Yet, the legal standard does not hinge on onus to the offender. I must decide whether IWD abused its discretion in assigning a particular penalty for the wrongdoing. The length of time chosen by Saddoris is consistent with the regulations and internal policy guidelines of IWD. It takes into account that more than 9 weeks of illegal reporting is a considered by the Department to be a very serious offense. Cuttler did not admit to his wrongdoing until after an audit. He committed to paying back the overpayments, but failed to consistently fulfill his obligation. I cannot find Saddoris abused her discretion in finding the relevant disqualification period should be the remainder of the benefit year.

Under these circumstances, the Department's decision to impose an administrative penalty was correct and the length of the administrative penalty imposed does not exceed the time period allowed in the Department's regulations. The Department correctly determined Cuttler was ineligible to receive unemployment insurance benefits.

DECISION

Iowa Workforce Development's decision dated February 16, 2016 is AFFIRMED. The Department correctly imposed the administrative penalty. The Department shall take any action necessary to implement this decision.