

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

DECISION OF THE ADMINISTRATIVE LAW JUDGE

**DAVID MATHEIS**  
**1724 HUNTSMAN DRIVE**  
**AIKEN SC 29803-5240**

**INVESTIGATIONS AND RECOVERY**  
**IOWA WORKFORCE DEVELOPMENT**  
**1000 EAST GRAND AVENUE**  
**DES MOINES IA 50319-0209**

DAN ANDERSON, IWD

**Appeal Number: 07-IWDUI-175**  
**OC: 02/11/07**  
**Claimant: Appellant (4)**

**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, 4<sup>TH</sup> 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.

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(Administrative Law Judge)

December 28, 2007

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(Decision Dated & Mailed)

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Section 96.4-3 - Able and Available  
Section 96.5-8 - Administrative Penalty  
871 IAC 25.9(2) - Penalties

#### STATEMENT OF THE CASE:

The claimant filed an appeal from an Iowa Workforce Development Department decision dated December 4, 2002, reference 02, which disqualified the claimant from receiving benefits for a period from November 18, 2007 to February 23, 2008, due to a prior overpayment based on misrepresentation.

The hearing was held pursuant to due notice on December 26, 2007, by telephone conference call. The claimant participated. Irma Lewis, Investigator, participated on behalf of Iowa Workforce Development, Investigations and Recovery.

#### 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 February 11, 2007. A representative of Iowa Workforce Development issued a decision that the claimant was over paid benefits \$2,870.00 due to misrepresentation on December 10, 2007.

The claimant signed an Agreement to reimburse the department the amount of the overpayment, \$2,870, on December 3, 2007 at the rate of \$410 per month beginning January 30, 2008. The claimant accepted responsibility for his actions without excuse.

The department policy guideline is to impose a penalty range from twelve weeks to the remainder of the benefit year when the fraudulent overpayment occurs during a period of seven weeks. Investigator Lewis elected a fourteen week penalty in this matter.

During the hearing, the claimant expressed remorse and accepted full responsibility for his actions. The claimant is currently unemployed. There is no evidence that the claimant has any prior (to the \$2,780) overpayment history.

#### 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 should be modified 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 14-week period of disqualification imposed by the department is within the administrative penalty discretion of the law.

The administrative law judge concludes that a three-week period of disqualification is appropriate given the extent of the claimant's remorse, and his immediate response of admitting his wrong-doing with an agreement to repay the overpayment.

#### DECISION:

The decision of Iowa Workforce Development dated December 4, 2007, reference 02, is MODIFIED in favor of the claimant. The claimant is disqualified from receiving benefits for the 3-week period ending December 8, 2007. The claimant is entitled to receive benefits effective December 9, 2007, provided he is otherwise eligible.

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