

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

DECISION OF THE ADMINISTRATIVE LAW JUDGE

ANDREI J. MURPHY
1204 49TH STREET, UNIT 6
WEST DES MOINES, IA 50266-5435

INVESTIGATION AND RECOVERY
IOWA WORKFORCE DEVELOPMENT
ATTN: IRMA LEWIS
150 DES MOINES STREET 50309-0209

JOE WALSH, IWD

Appeal Number: 12-IWDUI-477
OC: 05/20/12
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 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)

October 26, 2012

(Decision Dated & Mailed)

Section 96.5-8 - Administrative Penalty
871 IAC 25.9(2) - Penalties

STATEMENT OF THE CASE

Claimant Andrei Murphy filed an appeal from an Iowa Workforce Development Department decision dated September 7, 2012, reference 3, which disqualified him from receiving benefits for the period from September 2, 2012 through the end of the benefit year on May 18, 2013 due to a prior overpayment history based on misrepresentation.

Hearing was scheduled for October 25, 2012 and due notice was sent to all parties. At the time of hearing, Investigator Irma Lewis appeared and participated on behalf of Iowa Workforce Development. The documents in the administrative file were marked as exhibits 1-18 and were admitted into evidence. Appellant Andrei Murphy appeared and

was self-represented.

FINDINGS OF FACT

The department conducted an audit and investigation on a claim for benefits made by Andrei Murphy. On October 13, 2011, a representative of Iowa Workforce Development issued a decision that Mr. Murphy was overpaid benefits in the amount of \$3,421 for the eleven weeks beginning December 26, 2010 and March 12, 2011 due to misrepresentation on his part.¹ Mr. Murphy did not appeal that decision. It has become final.

Mr. Murphy filed a new claim for benefits effective May 20, 2012. After Investigator Irma Lewis was notified of the claim she sent a letter to Mr. Murphy indicating IWD was considering imposing an administrative penalty against him and providing him with an opportunity to respond by mail to as to whether such a penalty should be assessed on his current unemployment claim. The imposition of an administrative penalty issue was proposed because of Mr. Murphy's previous overpayment which resulted from the misrepresentation to the department as to wages earned.

Mr. Murphy did respond by mail. He stated that during his previous unemployment claim, he was under the erroneous impression he was allowed to draw benefits until the balance of his unemployment account was zero. He also alleged he was misinformed in that regard by "several representatives from the Iowa Workforce Development." Mr. Murphy noted he had repaid all sums owed and had been notified by Ms. Lewis of the proper procedures when filing a claim.

On September 7, 2012, the department issued its decision imposing the administrative penalty against Mr. Murphy.

Mr. Murphy filed this appeal. At hearing, he argued that he never intended to defraud Workforce Development and that his error was only in failing to read through the paperwork he received from the department, accepting incorrect information from IWD employees and failing to listen to the recordings each week when he called in his claims. Mr. Murphy noted that he was arrested and charged with a criminal offense after one of the payments he sent to Workforce Development to be applied against his overpayment was late. He paid the balance in full and the charges against him were dismissed. Mr. Murphy stated that when any prospective employer runs a background check on him, the criminal charge appears. Even though the check also shows the charge was dismissed, Mr. Murphy believes he is prejudiced. He opined that the imposition of an administrative penalty at this point is too harsh, considering what he has been subjected to previously.

¹ It should be noted that the only reference to misrepresentation on the notice was a reference to the fact the decision was made under Iowa Code section 96.16-4 which deals with recovery of benefits erroneously paid due to misrepresentation. The word "misrepresentation" does not appear anywhere on the decision.

CONCLUSIONS OF LAW

The issue in this appeal is whether the department correctly imposed an administrative penalty disqualifying Andrei Murphy from receiving unemployment insurance benefits for the period commencing September 2, 2012 through May 18, 2013.

Iowa law provides for imposition of an administrative penalty when it is determined that an individual has, within the 36 months prior to a claim for unemployment benefits, willfully and knowingly failed to disclose a material fact with the intent to obtain benefits to which he or she is not entitled. The penalty consists of a forfeiture of benefits for no longer than the remaining benefit period. The administrative penalty is to be imposed in addition to all other applicable penalties.²

The department has adopted rules for the implementation of administrative penalties. Those rules stress that each case must be decided on its merits and that the degree and severity of the penalty is to be determined at the discretion of the investigator.³ The penalty for falsification ranges from three weeks through the end of the benefit year.⁴

Here, Mr. Murphy was the subject of an overpayment decision based on his misrepresentation to the department. He did not appeal that decision. Additionally, the record shows that for eleven straight weeks he reported he was not working when he actually was when claiming benefits. For several weeks previously, however, he correctly reported his status. Mr. Murphy's explanation that he suddenly quit listening to the recording and forgot what he was being asked to certify each week when he made his claim is simply not credible.

Iowa law clearly provides for the imposition of the administrative penalty under the facts of Mr. Murphy's case and specifically provides for an administrative penalty in addition to all other applicable penalties. I cannot find that the imposition of such a penalty was incorrect or that the length of the penalty was an abuse of discretion given the number of weeks Mr. Murphy inaccurately reported his status and the amount of benefits he erroneously received as a result. The administrative penalty imposed by the department should be affirmed.

DECISION

The decision of Iowa Workforce Development dated September 7, 2012, reference 3 is **AFFIRMED**. Andrei Murphy is disqualified from receiving benefits for the period from September 2, 2012 until the end of his benefit year, May 18, 2013.

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² Iowa Code section 96.5-8.

³ 871 IAC 25.9(2)(b), 25.9(2)(c)(1).

⁴ 871 IAC 25.92(b).