

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 her claim for benefits effective June 15, 2003. A representative of Iowa Workforce Development issued decisions that the claimant was over paid benefits due to misrepresentation, to wit: March 18, 2004 - \$1,778; May 18, 2004 - \$3,180; September 3, 2004 - \$1,524. The Employment Appeal Board affirmed the decisions, and there was no further appeal. The decisions involved twenty-six weeks of unreported wages (seven, thirteen and six).

The department referred the misrepresentation overpayments to the Polk County, Iowa attorney's office, and a criminal charge was filed against the claimant. After an arbitration proceeding, the claimant plead guilty to a misdemeanor level offense, was placed on probation, and agreed to make restitution to the department.

When the claimant filed her most recent claim effective September 4, 2005, a representative of the department notified Investigation & Recovery. Since the investigator (Lori Busma) who was involved in the overpayment matter had left the department, the case was assigned to Investigator Lewis.

Lewis reviewed the department file history, and she mailed a warning letter to the claimant on September 13, 2005 that the department was considering a penalty regarding the claimant's recent unemployment claim. The claimant called Lewis, and blamed the overpayment situation on a misunderstanding regarding her belief that she did not need to report her work when claiming for partial unemployment benefits. The claimant requested she be allowed to claim for and receive benefits in order to make court-ordered restitution payments.

Investigator Lewis considered the department policy of imposing a remainder of a benefit year penalty when the overpayment involves nine or more weeks of unreported wages. In addition, the claimant knowingly failed to report her work and any wages for twenty-six weeks while claiming for benefits. The claimant admitted in a letter to the department dated May 2004 that she knowing received benefits that she was not entitled to in order to pay her bills.

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 is correct pursuant to Iowa Code Section 96.4-3 and Iowa Code Section 96.5-8. The claimant was the subject of three overpayment decisions due to misrepresentation within the time period established by the law, which the Employment Appeal Board affirmed on appeal, and they has now become final. The remainder of the benefit year period of disqualification imposed by the department is within the administrative penalty discretion of the law.

While the claimant did plead guilty to a criminal offense arising out of her acts of misrepresentation, and is making restitution payments, these factors are not sufficient to mitigate the penalty imposed by the department in this matter. The twenty-six weeks of unreported wages far exceeds the department policy standard (nine weeks) for imposing a remainder of the benefit year penalty period. The claimant minimized her conduct in this hearing that lead to the overpayment and plea of guilty to a criminal offense, which shows a lack of remorse for her actions.

DECISION:

The decision of Iowa Workforce Development dated October 13, 2005, reference 01, is **AFFIRMED**. The claimant is disqualified from receiving benefits for the remainder of her benefit year period ending September 3, 2006.

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