

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

Appeal Number: 08-IWDUI-049
OC: 03/16/08
Claimant: Appellant (4)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

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.**

RACHEL N HAWKINS
2411 WELVECK RD #6
DES MOINES IA 50310-5650

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

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

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.

DAN ANDERSON, IWD

(Administrative Law Judge)

May 2, 2008

(Decision Dated & Mailed)

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 April 1, 2008, reference 01, which disqualified the claimant from receiving benefits for a period from March 16, 2008 to September 27, 2008, due to a prior overpayment based on misrepresentation.

The hearing was held pursuant to due notice on April 29, 2008, 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 her claim for benefits effective March 18, 2007. A representative of Iowa Workforce Development issued a decision that the claimant was over paid benefits \$4,004.00 due to misrepresentation on November 19, 2007. The decision was not appealed, and it has now become final.

When the claimant filed her most recent claim effective March 16, 2008, a department representative notified Investigator Lewis. Lewis mailed a warning letter to the claimant dated March 19, 2008 that the department was considering a penalty on her recent claim due to the \$4,004 overpayment. The claimant responded with a letter dated March 25. The claimant explained that she had contacted department representatives about her training with Quest, and she believed she did not have to report earnings for this twelve-week period. The department records show the claimant continued to claim for and receive benefits after the conclusion of her training on July 23, 2007.

Later, the claimant gave a telephone-statement to Lewis that she acknowledged the overpayment, and she would repay it with \$50 monthly payments. Lewis mailed a repayment agreement to the claimant, but it was not returned. The claimant responded to a further department inquiry in February 2008, and she remitted \$150 for payments (December '07, January/February '08) to apply against the overpayment. A second repayment agreement was mailed to the claimant, but it was not returned.

The department policy (guideline) is to impose a remainder of the benefit year disqualification when a person has a misrepresentation-overpayment that involves nine or more weeks. The claimant's \$4,004 overpayment involves fourteen (14) weeks of unreported wages. Lewis imposed a middle-of-the-road penalty, as the claimant had no other overpayment history, she is unemployed, and she did make some effort to repay the overpayment. Lewis imposed a penalty of 28-weeks that represents 2-weeks of disqualification for each of the 14 weeks of the overpayment.

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 28-week period of disqualification imposed by the department is within the administrative penalty discretion of the law.

The claimant did not appeal the misrepresentation overpayment decision, so that matter is not reviewable in this hearing. The circumstances of how that overpayment occurred may be given consideration as to the length of any penalty imposed by the department.

It is believable that the claimant may have misunderstood department representatives about the need to report "any earnings" from an employer, and any work, even though it may have been training. The claimant has no prior overpayment history, and she did make three monthly payments while employed. A one-week disqualification for each of the fourteen weeks is appropriate.

DECISION:

The decision of Iowa Workforce Development dated April 1, 2008, reference 01, is MODIFIED in favor of the claimant. The claimant is disqualified from receiving benefits for the 14-week period ending June 21, 2008.

rls