

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

DECISION OF THE ADMINISTRATIVE LAW JUDGE

ELGIN J BYRON
1128 NINTH STREET
DES MOINES IA 50314

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

DAN ANDERSON, IWD

Appeal Number: 07-IWDUI-021
OC: 12/24/06
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, 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)

February 16, 2007

(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 January 18, 2007, reference 01, which disqualified the claimant from receiving benefits for a period from January 14, 2007 to the end of the benefit year on December 23, 2007, due to a prior overpayment based on misrepresentation.

The hearing was held pursuant to due notice on February 12, 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 October 3, 2004. A representative of Iowa Workforce Development issued a decision that the claimant was over paid benefits \$184.00 due to misrepresentation on June 3, 2005. A further department decision was issued on October 6, 2005 that held the claimant was overpaid benefits \$1,009. The decisions were not appealed, and they have now become final.

When the claimant filed his most recent claim effective December 24, 2006, a department representative notified Investigator Lewis. Lewis mailed a warning letter to the claimant on January 4, 2007 regarding the overpayments, and letting him know the department was considering imposing a penalty on his current claim. The claimant was given a deadline of January 15 to respond.

The claimant appeared in-person at the department office on January 16 (Monday) to present his response, but he learned the office was closed due to the Martin Luther King holiday. The department issued the decision before it received the claimant's response.

The department has a policy guideline of imposing a penalty ranging from ten weeks to the remainder of the benefit year where there is a prior offense (\$184 overpayment) followed by six weeks of misrepresentation-overpayments (\$1,009). The claimant incurred four weeks of overpayment totaling \$184 that involved three weeks of failing to report any work and wages. The claimant incurred six weeks of overpayment totaling \$1,009 that involved five weeks of failing to report any work and wages.

The claimant has satisfied the outstanding overpayment(s) by repayment of \$20, and by department offset procedure on benefit entitlements. In the claimant's response, he apologized for failing to report his work and wages for temporary jobs. Lewis acknowledged that she might have imposed a lesser penalty period given the claimant's late response to her notice.

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 overpayment decisions due to misrepresentation within the time period established by the law, which were not appealed, and they have 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.

There are two factors present in this matter that merit a reduction of the penalty period to a sixteen week period that represents two weeks of disqualification for each week of a misrepresented overpayment where no work and wages was reported (eight weeks). The claimant repaid the overpayment(s), and he demonstrated a genuine remorse for his actions. Lewis acknowledged that, if she had received the claimant's response in a timely manner, she would have considered a lesser penalty.

DECISION:

The decision of Iowa Workforce Development dated January 18, 2007, reference 01, is MODIFIED in favor of the claimant. The claimant is disqualified from receiving benefits for the 16-week period ending May 5, 2007. The claimant is entitled to receive benefits effective May 6, 2007, provide he is otherwise eligible.

rls