

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

DECISION OF THE ADMINISTRATIVE LAW JUDGE

**JOAN D MILLIE**  
**3714 GREEN AVENUE**  
**SIOUX CITY IA 51106**

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

DAN ANDERSON, IWD

**Appeal Number: 06-IWDUI-211**  
**OC: 10/15/06**  
**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, 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.

---

(Administrative Law Judge)

December 8, 2006

---

(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 November 6, 2006, reference 01, which disqualified the claimant from receiving benefits for a period from October 15, 2006 to December 9, 2006, due to a prior overpayment decision based on misrepresentation.

The hearing was held pursuant to due notice on December 4, 2006, by telephone conference call. The claimant participated. Cindy Stroud, 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 October 16, 2005. A representative of Iowa Workforce Development issued a decision that the claimant was over paid benefits \$1,092.00 due to misrepresentation on September 18, 2006. The decision was not appealed, and it has now become final.

When the claimant filed her most recent claim effective October 15, 2005, a department representative notified Investigator Stroud. Stroud mailed a warning notice to the claimant dated October 23, 2006 that the department was considering a penalty on her current claim due to the prior overpayment. The claimant did not respond.

As to the \$1,092 overpayment, the claimant failed to report full-time wages for a four-week period. The department policy provides for a penalty period ranging from six to sixteen weeks in this matter. Stroud imposed a penalty of eight weeks due to the claimant repaying her overpayment in full.

During the hearing, the claimant offered that the overpayment occurred due to her not receiving a paycheck for three weeks.

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

The claimant demonstrated her remorse for this overpayment by repaying this amount prior to the department issuing the penalty. The minimum penalty is appropriate in this matter.

**DECISION:**

The decision of Iowa Workforce Development dated November 6, 2006, reference 01, is MODIFIED in favor of the claimant. The claimant is disqualified from receiving benefits for the six -week period ending November 25, 2006. The claimant is entitled to receive benefits effective November 26, 2006, provided she is otherwise eligible.

rls