

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

Appeal Number: 10-IWDUI-261

OC: 7/4/10

Claimant: Appellant (1)

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 Notice of Appeal, directly to the **Employment Appeal Board, 4TH Floor Lucas Building, Des Moines, Iowa 50319.**

**STEPHANIE MARTIN
601 NW BEECHWOOD ST.
ANKENY, IA 50023-1337**

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

**IOWA WORKFORCE DEVELOPMENT
INVESTIGATIONS AND RECOVERY
150 DES MOINES STREET
DES MOINES IA 50309**

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.

DAN ANDERSON, IWD

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)

November 2, 2010

(Decision Dated & Mailed)

STATEMENT OF THE CASE

Stephanie Martin filed a timely appeal from a decision issued by Iowa Workforce Development (the Department) dated August 5, 2010, reference 01. In this decision, the Department disqualified Ms. Martin from receiving unemployment insurance benefits from July 4, 2010 through March 12, 2011. The decision stated that the penalty was a result of false statements made by Ms. Martin concerning employment and earnings from February 3, 2008 through June 14, 2008.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals on August 18, 2010 to schedule a contested case hearing. A Notice of Telephone Hearing was mailed to all parties on September 9, 2010. On September 24, 2010, a telephone appeal hearing was held before Administrative Law Judge Laura Lockard. Investigator Irma Lewis represented the Department and presented testimony. Appellant Stephanie Martin appeared and presented testimony.

Exhibits A through F were submitted by the Department and admitted into the record as evidence.

ISSUE

Whether the Department correctly imposed an administrative penalty on the basis of false statements made by the appellant.

FINDINGS OF FACT

On October 2, 2008, the Department issued a decision finding that Stephanie Martin was overpaid \$5,136 in unemployment insurance benefits for 18 weeks between February 3, 2008 and June 14, 2008. The decision stated that the overpayment was a result of Ms. Martin's failure to report wages earned with Crystal Inc. The Department determined that the overpayment was a result of misrepresentation. (Exh. B). Ms. Martin did not appeal the Department's October 2, 2008 decision and she set up a payment plan with the Department to repay the overpaid benefits. She ultimately repaid the overpaid benefits in full. (Lewis testimony).

At some later point, Ms. Martin filed a new claim for benefits with an effective date of July 4, 2010. Investigator Irma Lewis mailed Ms. Martin a letter dated July 16, 2010 informing her that an administrative penalty was going to be assessed on her current claim which would disqualify her from receiving benefits for a specific period of time because of false information given on prior claims for benefits. The letter specifically referenced the \$5,136 overpayment discussed above. The letter informed Ms. Martin that she was being given the opportunity to respond by mail regarding why she did not correctly report the wages from her employment with Crystal Inc. (Exh. A).

On July 21, 2010, Ms. Martin called Ms. Lewis and informed her that she would like to use the statement she previously made during the process of negotiating repayment of the overpayment. Ms. Lewis indicated she still had this statement. There is some confusion regarding which statement Ms. Martin was referring to. Ms. Lewis assumed that Ms. Martin meant an oral statement that Ms. Martin previously made. Ms. Lewis had notes from that statement and used those in considering the administrative penalty. Ms. Martin asserts that she was referring to a written statement that she submitted in conjunction with the previous overpayment negotiation. Ms. Martin did not provide a copy of that written statement for purposes of this appeal. Ms. Lewis testified there is no statement from Ms. Martin in the Department's database that corresponds to the previous overpayment issue. (Martin; Lewis testimony).

Notwithstanding the confusion regarding the statement, Ms. Martin had an opportunity at the appeal hearing to explain the overpayment. She stated that the overpayment resulted from her pay periods being different than the Department's claim reporting period. She was paid every two weeks and was required to call in her unemployment claim every week. (Martin testimony).

The evidence submitted at hearing shows that Ms. Martin reported no wages from early February, 2008 through May 17, 2008. Ms. Martin's employer reported that she earned

wages in all of those weeks except one. Her weekly earnings ranged from \$180 to \$999 during that time period. During eight of those weeks, she earned over \$500 in gross wages. She received unemployment insurance benefits of \$426 in each of those weeks. Ms. Martin began reporting earnings on approximately May 24, 2008. The amounts she reported for the following four weeks were, with only one exception, significantly lower than the gross earnings that her employer reported. (Exh. B).

When an individual calls in to report her weekly unemployment claim, she is asked whether she worked during the week in question. Ms. Martin reported that she did not work at all during at least 14 weeks that she had earnings from Genesis Senior Living Center and Crystal Inc. (Lewis testimony; Exh. B).

Ms. Lewis decided that a 36-week administrative penalty was appropriate based on the fact that Ms. Martin was overpaid for 18 weeks as a result of misrepresentation. She multiplied the weeks of overpayment by two in order to arrive at the 36-week disqualification period. (Lewis testimony). Ms. Lewis cited to internal agency guidelines that recommend disqualifying a claimant for the remainder of their benefit year when the number of weeks in which false statements or misrepresentations were made is nine or greater. She stated that she decided on the 36-week time period, rather than disqualification for the remainder of the benefit year, because it was Ms. Martin's first offense. (Lewis testimony; Exh. C).

REASONING AND CONCLUSIONS OF LAW

The Department is authorized to impose an administrative penalty when it determines that an individual has, within the thirty-six preceding calendar months, willfully and knowingly made a false statement or misrepresentation or willfully and knowingly failed to disclose a material fact with the intent to obtain unemployment benefits to which the individual is not entitled.¹ The imposition of an administrative penalty results in the forfeiting of all unemployment benefits for a period of time to be determined by the Department; the period, however, cannot exceed the remainder of the individual's benefit year.²

The Department's investigator considers the facts and nature of the offense in determining the degree and severity of the penalty. The penalty range for falsification is from three weeks through the remainder of the benefit year. The investigator has broad discretion to determine the actual penalty to be imposed within the range.³

Ms. Martin offered no plausible explanation at hearing for why she reported she did not work during 14 weeks when she had significant earnings from an employer. Her explanation at hearing that her pay periods were different from the unemployment claim reporting period simply does not make sense. During 14 of the 18 weeks she was overpaid, Ms. Martin reported that she did not work at all. If there had been a slight discrepancy between what was reported and Ms. Martin's actual earnings, the pay

¹ Iowa Code § 96.5(8) (2009).

² *Id.*

³ 871 Iowa Administrative Code (IAC) 25.9(2).

period explanation might be plausible. Based on the evidence in this case, however, it simply is not credible. Ms. Martin's reports to the Department that she did not work at all or that she earned significantly less than she actually earned constitute willful and knowing false statements. They are sufficient justification for imposition of an administrative penalty.

Ms. Martin argued that the Department should be precluded from assessing an administrative penalty now because she already applied for and received unemployment insurance benefits without being assessed an administrative penalty after the overpayment that is relied upon here. The relevant statute allows the Department to assess an administrative penalty when a claimant has willfully and knowingly made false statements or omissions during the thirty-six preceding calendar months. The false statements that the Department relies upon here occurred within that time period, therefore the Department is authorized to assess an administrative penalty now, even if it did not do so during a prior benefit year.

While Ms. Lewis cited to internal agency guidelines regarding determining the length of an administrative penalty disqualification, those guidelines have not been formally adopted pursuant to the rulemaking process laid out in Chapter 17A of the Iowa Code. Accordingly, the Department cannot rely on the guidelines as justification for a decision regarding an administrative penalty.⁴ Nevertheless, the penalty imposed in this case did not exceed the maximum penalty allowed under the Department's regulations and the Department's investigator did not abuse her discretion in determining the length of the penalty. The Department's decision, therefore, must be affirmed.

DECISION

Iowa Workforce Development's decision dated August 5, 2010, reference 01, is **AFFIRMED**. The appellant is disqualified from receiving unemployment insurance benefits from July 4, 2010 through March 12, 2011. The Department shall take any action necessary to implement this decision.

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⁴ See *Anderson v. Iowa Dept. of Human Services*, 368 N.W.2d 104, 108 (Iowa 1985).