

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

DECISION OF THE ADMINISTRATIVE LAW JUDGE

MIGUEL A. BURGOS
PO BOX 1713
MARSHALLTOWN, IA 50158

IOWA WORKFORCE DEVELOPMENT
Jenny Lara - Investigator

JONI BENSON, IWD

Appeal Numbers: 15IWDUI103

OC: 2/1/15

Claimant: Appellant (1)

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.***

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)

April 14, 2015

(Decision Dated & Mailed)

Iowa Code section 96.5-8 – Administrative Penalty
Iowa Code section 96.4-3 – Ineligibility for Benefits

STATEMENT OF THE CASE

Claimant/Appellant Miguel A. Burgos filed an appeal from a decision issued by Iowa Workforce Development (“IWD”) dated March 3, 2015, reference 01. IWD determined Burgos was ineligible to receive unemployment insurance benefits because IWD’s records indicated Burgos made false statements concerning his employment and earnings and did so to receive unemployment insurance benefits from December 8, 2013, through July 5, 2014. IWD imposed an administrative penalty disqualifying Burgos from receiving unemployment insurance benefits from March 1, 2015 through May 23, 2015 (12 weeks).

IWD transmitted the case to the Department of Inspections and Appeals. On April 14, 2015 a contested case hearing was held. Jenny Lara appeared and testified on behalf of IWD. Miguel Burgos appeared and testified on his own behalf. Exhibits A1 through B7 were admitted into evidence without objection.

ISSUES

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

Whether the Department correctly determined the claimant is ineligible to receive unemployment insurance benefits.

FINDINGS OF FACT

IWD made a decision that Burgos had been overpaid unemployment benefits between December 8, 2013 and July 5, 2014. An Unemployment Insurance Decision Notice, dated November 24, 2014, determined that he had been overpaid \$3703 for that 12 week period. It therefore ordered that this amount must be repaid. Burgos appealed from this decision, but failed to appeal for the appeal hearing. Consequently, a decision was entered by an administrative law judge on February 2, 2015, that upheld the overpayment decision.

Following the overpayment decision, on February 16, 2015, IWD Investigator Jenny Lara sent Burgos a Penalty Notice Letter informing him that an administrative penalty consisting of disqualification may be entered due to the overpayment. He was given an opportunity to respond, and he did in fact call in and talk to Lara. She explained the penalty procedures.

IWD subsequently entered a Penalty Decision Letter on March 3, 2015. This letter informed Burgos of IWD's conclusion that he had made false statements concerning his earnings and that consequently he would have an administrative penalty of disqualification from March 1, 2015 through May 23, 2015. Lara explained that even though administrative rules recommended a disqualification for the remainder of the benefits year, she reduced it to 12 weeks because he actually did report some wages, and did not hide all his earnings.

IWD's Crossmatch Audit Worksheet shows that Burgos under-reported his earning for 12 weeks. On four of those weeks, he reported no wages, while he did report either \$300 or \$500 in wages for the remaining eight weeks. On most of those weeks he actually earned over \$1000 in gross wages.

On appeal from the administrative penalty decision, Burgos explained that he is a struggling single parent and needs the unemployment benefits. He claimed that he simply needs to pay more attention when he does things online and he claimed that he

was assured by an IWD employee that he was reporting things properly. He believes he is “getting the short end of the stick.”

REASONING AND CONCLUSIONS OF LAW

IWD may impose an administrative penalty if an insured person has, within the preceding 36 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 defraud by obtaining benefits the person is not entitled to.¹ The person is disqualified for the week in which IWD makes the determination and forfeits all benefit rights to unemployment insurance benefits for a period of not more than the remaining benefit period as determined by IWD.² The IWD investigator exercises his or her discretion to determine the degree and severity of the penalty, based on the nature of the offense and facts.³

Burgos made no attempt to contest the fact that he failed to accurately report his wages to IWD for 12 weeks. He simply claimed that an IWD representative told him that he was reporting correctly and that he needs to be more careful. However, the fact remains that for those 12 weeks he significantly and repeatedly under-reported his wages. In fact, on three of those weeks he reported no wages at all even though he earned upwards of \$1000.

Iowa Code section 96.5 (8) places limits on the Department’s ability to impose an administrative penalty. The Department must first show that Burgos had the “intent to defraud” and that he did so in order to obtain “benefits not due under this chapter” The Department must also show that Burgos “willfully and knowingly” made a “false statement or misrepresentation” or “willfully and knowingly failed to disclose a material fact” to obtain benefits.

Black’s Law Dictionary defines knowing as “having or showing awareness or understanding” and “deliberate; conscious.”⁴ Willful is defined as “voluntary and intentional, but not necessarily malicious.”⁵ The record shows that Burgos provided false statements to the department in order to obtain benefits over an extended period of time. This evinces an awareness and deliberateness on his part. The department provided substantial evidence that Burgos willfully and knowingly made false statements in order to receive benefits. The administrative penalty imposed in this case appears to meet the requirements of the statute.

DECISION

¹ Iowa Code § 96.5(8).

² *Id.* § 96.5(8).

³ 871 IAC 25.9(2) *c.*

⁴ *Black’s Law Dictionary* (7th Ed. 1999).

⁵ *Id.*

IWD's decision to impose an administrative penalty that would disqualify Burgos from receiving unemployment benefits from March 1, 2015 through May 23, 2015 is affirmed (found to be correct).