

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

**Appeal Number: 12IWDUI059**  
**OC: 11/13/11**  
**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, 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.

DECISION OF THE ADMINISTRATIVE LAW JUDGE

**RUSSELL FOSTER**  
**313 N. PIERCE AVE.**  
**MASON CITY, IA 50401-2747**

STATE CLEARLY

**IOWA WORKFORCE DEVELOPMENT**  
**INVESTIGATIONS AND RECOVERY**  
**JANE CONNOR**  
**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.

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.

JOE WALSH, IWD

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(Administrative Law Judge)

April 5, 2012

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(Decision Dated & Mailed)

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### STATEMENT OF THE CASE

Russell Foster filed an appeal from a decision issued by Iowa Workforce Development (the Department) dated December 29, 2011, reference 01. In this decision, the Department imposed an administrative penalty that disqualified Foster from receiving unemployment insurance benefits from December 25, 2011 through November 10, 2012.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals on February 9, 2012 to schedule a contested case hearing. A Notice of Telephone Hearing was mailed to all parties on February 13, 2012. On March 9, 2012, a telephone appeal hearing was held before Administrative Law Judge Laura Lockard. Investigator Jane Connor represented the Department and presented testimony. Appellant Russell Foster appeared and presented testimony. Exhibits A through L 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

Russell Foster filed a claim for unemployment insurance benefits with an effective date of November 13, 2011. At some point after Foster filed this claim, the Department began investigating whether a previous overpayment incurred by Foster justified the imposition of an administrative penalty. (Connor testimony; Exh. D).

In 2009, while Foster was receiving benefits on a prior claim, there were 13 weeks between July and October when Foster's employer, Curries-Graham, reported that he earned wages. Foster did not report having earned wages during those weeks to the Department during the claims reporting process. In response to the questions posed during the automatic claims reporting process during those weeks, Foster indicated that he did not work. Foster was overpaid a total of \$4,933 for the 13 weeks in question and the Department determined that the overpayment was a result of misrepresentation. (Exh. E, F; Connor testimony).<sup>1</sup> Foster did not appeal that decision. (Connor testimony).

When the Department received notice that Foster had filed another claim effective November 13, 2011, Foster was sent a letter on December 5, 2011 explaining that the Department would be making a determination regarding whether to impose an administrative penalty that would disqualify him from receiving benefits for a set amount of time. The letter indicated that the administrative penalty was being considered based on Foster's failure to report wages earned with Curries-Graham from July 5 through October 3, 2009. The Department gave Foster the opportunity to respond by mail by December 19, 2011 concerning the potential administrative penalty. (Exh. D). Foster did not make any contact with the Department to discuss the issue prior to the deadline. (Connor testimony).

Based on the circumstances of the 2009 overpayment, the Department made the decision to impose an administrative penalty disqualifying Foster from receiving unemployment insurance benefits from December 25, 2011 through November 10, 2012, the end of Foster's benefit year. Connor testified that the Department's internal manual provides for imposition of an administrative penalty through the end of an individual's benefit year when falsification occurs for nine weeks or more. (Connor testimony).

At hearing, Foster testified that he is typically laid off from his employment with Curries-Graham for four to five months each year. At the beginning of the 2009

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<sup>1</sup> While the Department's decision does not specifically state that the overpayment was the result of misrepresentation, the decision states that it was made under section 96.16(4) of the Iowa Code. That section relates to overpayments made as a result of misrepresentation and the consequences the Department may impose.

overpayment time period, Foster testified that he was told when he was recalled that employees might be laid off again within one or two weeks. Foster testified that someone with his employer told him not to screw up his unemployment insurance by reporting that he was back at work. Foster testified that he should not have done it, but he kept collecting. Foster testified that he made a mistake, but he thinks that he has paid for it as his unemployment benefits have been withheld to pay back the overpayment. (Foster testimony).

### **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.<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup>

At hearing, Foster admitted that he misrepresented his employment status during the time period at issue in order to receive unemployment insurance benefits. The fact that the overpayment has been repaid from Foster's unemployment insurance benefits has no bearing on whether the Department was correct in imposing an administrative penalty. An administrative penalty is based upon the false statements that resulted in an overpayment; the fact that a claimant has repaid any monies owed after the overpayment was discovered does not mitigate against imposing an administrative penalty. The Department's decision to impose an administrative penalty was correct and the length of the administrative penalty imposed in this case does not exceed the time period mandated in the Department's regulations.

### **DECISION**

Iowa Workforce Development's decision dated December 29, 2011, reference 01, is **AFFIRMED**. The Department correctly imposed the administrative penalty. The Department shall take any action necessary to implement this decision.

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<sup>2</sup> Iowa Code § 96.5(8) (2011).

<sup>3</sup> *Id.*

<sup>4</sup> 871 Iowa Administrative Code (IAC) 25.9(2).

