

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

Appeal Number: 11IWDUI165

OC: 3/27/11

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.**

**SHELDON CAINE
1600 STELLAR AVE., APT. 5
OTTUMWA, IA 52501**

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.

JOE WALSH, 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)

September 2, 2011

(Decision Dated & Mailed)

STATEMENT OF THE CASE

Sheldon Caine filed an appeal from a decision issued by Iowa Workforce Development (the Department) dated June 14, 2011, reference 02. In this decision, the Department imposed an administrative penalty on Mr. Caine, which disqualified him from receiving unemployment insurance benefits from June 12, 2011 through March 24, 2012. The decision stated that the administrative penalty was imposed on the basis of Mr. Caine having made false statements concerning his employment and earnings in order to receive unemployment insurance benefits from April 26, 2009 through October 3, 2009.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals on July 12, 2011 to schedule a contested case hearing. A Notice of Telephone Hearing was mailed to all parties on July 15, 2011. On August 11, 2011, a telephone appeal hearing was held before Administrative Law Judge Laura Lockard. Investigator Karen von Behren represented the Department and presented testimony.

Exhibits 1 through 9 were submitted by the Department and admitted into the record as evidence. The appellant did not appear and the hearing was held in his absence.

ISSUE

Whether the Department correctly imposed an administrative penalty.

FINDINGS OF FACT

Sheldon Caine filed a claim for unemployment benefits with an effective date of November 30, 2008. Mr. Davis made claims for and received unemployment benefits from April, 2009 through October, 2009. On March 24, 2010, the Department issued a decision finding that Mr. Caine was overpaid by \$2,587.30 in unemployment insurance benefits for 23 weeks between April 26, 2009 and October 3, 2009. The Department determined that the overpayment was a result of misrepresentation.¹ (Exh. 5). Mr. Caine did not appeal the overpayment decision. (Von Behren testimony).

From the week ending May 2, 2009 through the week ending October 3, 2009, Mr. Caine reported having earned no wages when he called in his unemployment claim each week. His employer, the City of Ottumwa, reported that he earned wages ranging from \$56 to \$320 during each of those weeks. (Exh. 6-8).

Mr. Caine most recently filed a claim for unemployment insurance benefits effective March 27, 2011. (Von Behren testimony; Exh. 2). The Department mailed a letter to Mr. Caine dated June 1, 2011 enclosing copies of the above-referenced overpayment decision and the documents upon which the Department relied in determining the overpayment. The letter notified Mr. Caine that the Department was considering imposing an administrative penalty on the basis of his having given false information on his claims from April through October, 2009. The letter also offered Mr. Caine the opportunity to respond by mail or fax regarding why wages were not correctly reported. The deadline to respond was June 13, 2011. Mr. Caine did not respond to this letter. (Exh. 3-9; Von Behren testimony).

On June 14, 2011, the Department issued a decision imposing an administrative penalty from June 12, 2011 through March 24, 2012, the end of Mr. Caine's benefit year. The decision states that it is based upon false statements made in order to receive unemployment insurance benefits from April 26, 2009 through October 3, 2009. (Exh. 2).

In order to determine the length of the penalty, the Department's investigator reviewed the severity of the offense. In this case, Mr. Caine reported that he did not work during 23 weeks that he was working and earning wages. Based on this fact, the Department

¹ 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.

determined that the maximum possible penalty was appropriate. (Von Behren 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.² 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.³

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.⁴

The Department's investigator testified at hearing that she imposed the maximum penalty on Mr. Caine based on the severity of the offense. In 23 weeks that he worked and earned wages, Mr. Caine reported that he did not work and earn wages. As a result of these false statements, he obtained benefits to which he was not entitled. Mr. Caine did not appear for hearing to offer any explanation for the false statements. 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 June 14, 2011 reference 2, is **AFFIRMED**. The Department shall take any action necessary to implement this decision.

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² Iowa Code § 96.5(8) (2011).

³ *Id.*

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