

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

**Appeal Number:** 13IWDUI133  
**OC:** 12/16/2012  
**Claimant:** Appellant (1)

**DECISION OF THE ADMINISTRATIVE LAW JUDGE**

**CHAD A. McGILVRA**  
3216 Williams  
Des Moines, IA 50317

**INVESTIGATIONS AND RECOVERY, IWD**  
Irma Lewis, INVESTIGATOR

JONI BENSON, IWD

**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, 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.

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(Administrative Law Judge)

May 16, 2013

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(Dated and Mailed)

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Iowa Code § 96.6(2) – Timeliness of Appeal  
Iowa Code § 96.5(8) - Administrative Penalty  
871 IAC 25.9(2) – Penalties

**STATEMENT OF THE CASE**

On March 12, 2013, Iowa Workforce Development received Claimant Chad McGilvra's request to appeal from a decision of the Iowa Workforce Development, Unemployment Insurance Services Division (IWD). The decision, dated January 15, 2013 (reference 01), disqualified Mr. McGilvra from receiving benefits for the period from January 6, 2013 until the end of his benefit year on December 14, 2013, as an administrative penalty for false statements made to receive unemployment insurance benefits in the past.

Hearing was held by telephone conference call on May 9, 2013. Appellant/Claimant McGilvra and IWD Investigator Irma Lewis both appeared and testified at hearing. Documents contained in the administrative file, which I have labeled as exhibits 1 through 9 are included in the hearing record. Additional documents, labeled as exhibits A through C were submitted by Investigator Lewis prior to hearing and are also included in the hearing record.

### **STATEMENT OF THE ISSUES PRESENTED**

Whether the Claimant filed a timely appeal.

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

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

### **FINDINGS OF FACT**

Chad McGilvra was working for OMG Midwest, Inc. during the months of October 2011 through April 2012. Although his hours were not steady, there was only one week during this 7-month period that McGilvra had no earnings – the week ending April 8, 2012. His earnings for the remaining weeks varied from as low \$89.73 (for 5.64 hours) to as high as \$700.00 (for 44 hours). (Exhibits 1 & 2)

McGilvra also received unemployment insurance benefits for 18 weeks from October 15, 2011 through April 21, 2012. In June of 2012 IWD conducted an audit investigation of the claims filed by McGilvra during this 7-month period. The audit found 15 weeks during the audit period in which McGilvra filed an unemployment claim and failed to report wages earned during the week. The audit found two additional weeks for which McGilvra underreported earnings. During this seven-month period McGilvra was overpaid \$3,015.00 in unemployment benefits. (Exhibit 2)

IWD sent McGilvra notice of to the audit findings and gave him an opportunity to respond. He submitted nothing to IWD for review. (Exhibit 3) On June 20, 2012, IWD issued a decision finding that McGilvra was overpaid \$3,015.00 in unemployment benefits during the period from October 30, 2011 to April 21, 2012, because he failed to report or incorrectly reported wages from OMG, Inc. (Exhibit 4) McGilvra did not appeal the overpayment claims. The administrative file includes a letter dated November 27, 2012, in which McGilvra states that he really had no reason as to why he failed to correctly report and that he understands that he needs to pay it back. He said he was hoping to use his weekly pay to pay back until he received his tax refund to pay the remaining balance. (Exhibit 6) The record is unclear what prompted McGilvra to send an explanation at that time.

McGilvra again claimed unemployment benefits in late 2012. On January 4, 2013, Investigator Irma Lewis sent McGilvra notice that IWD would be determining whether an Administrative Penalty, in the form of a disqualification from receiving benefits for a specific period of time, would be imposed because he failed to report correct work and wages earned with OMG Midwest. This letter allowed McGilvra to send a response to the proposed penalty by mail prior to January 11, 2013. IWD did not receive a direct response to this inquiry. Investigator did consider the statement McGilvra provided in the November letter, but found no satisfactory explanation for the underreporting of wages. (Exhibit 5 & Lewis testimony)

On January 15, 2013, A decision imposing an administrative penalty issued. Under this decision McGilvra is disqualified from receiving unemployment benefits from January 6, 2013 until the end of his benefit year on December 14, 2013. The notice of decision told McGilvra: "This decision becomes final unless an appeal is postmarked by 01/25/13, or received by Iowa Workforce Development Appeal Section by that date." (Exhibit 8)

McGilvra did not file his appeal request letter until March. The appeal request is dated and postmarked March 11, 2013. The request was received by IWD on March 12th. (Exhibit 9)

At hearing, McGilvra explained that he underreported his wages during the audit period because he thought he was only required to report wages when he worked 25 hours or more in a week. Although he had collected unemployment benefits when he was laid off in prior years, in the past he had been completely laid off and had no work hours to report. In response to questions from Ms. Lewis, McGilvra acknowledged that the online and telephone systems for filing weekly claims warn against providing false information and require response to the following question: "For the week ending [x] did you work?" McGilvra incorrectly answered this question 15 times during the audit period, responding "No" when he worked 25 hours or less.

McGilvra said he did not appeal the overpayment notice because he was told by co-workers that he could simply wait until he was laid off again and future benefits could be used to repay the debt. Indeed, when he started filing claims in late 2012, his benefits were collected to offset the overpayment debt. He continued to file weekly claims for benefits and did not immediately appeal after receiving notice of the administrative penalty because he assumed benefits were still being awarded and collected for payment on the debt. He went to IWD in late February to find out the remaining balance on the overpayment, which he intended to pay with his tax refund. When he realized the benefit payments had actually been suspended, he contacted Ms. Lewis and soon thereafter filed the appeal request. (McGilvra testimony)

### **CONCLUSIONS OF LAW**

The overpayment claim become final at the end of June, 2012 and is not subject to review in this case. The only issues properly presented for review here is whether McGilvra's appeal of the administrative penalty was timely and if so, whether IWD correctly imposed an administrative penalty disqualifying Chad McGilvra from receiving unemployment insurance benefits for the period from January 6, 2013 through December 13, 2012.

Iowa law provides for imposition of an administrative penalty when it is determined that an individual has, within the 36 months prior to a claim for unemployment benefits, willfully and knowingly made false statement or failed to disclose a material fact with the intent to obtain benefits to which he or she is not entitled. The penalty consists of a forfeiture of benefits for no longer than the remaining benefit period. The administrative penalty is to be imposed in addition to all other applicable penalties. Iowa Code § 96.5(8) (2013).

IWD has adopted rules for the implementation of administrative penalties. The rules stress that each case must be decided on its merits and that the degree and severity of the penalty is to be determined at the discretion of the investigator. 871 Iowa Admin. Code (IAC) 25.9(2)(b), 25.9(2)(c)(1). The penalty for deliberate falsification ranges from three weeks through the end of the benefit year. 871 IAC 25.9(2)(b).

Iowa Code section 96.6(2) requires a claimant to file an appeal of an IWD decision approving or denying a claim, including a decision imposing a disqualification, "within ten calendar days after notification was mailed to the claimant's last known address." The Iowa Supreme Court has determined that timely appeal is both mandatory and jurisdictional. *Beardslee v. Iowa Dep't of Job Servs.*, 276 N.W.2d 373, 377 (Iowa 1979).

The notification of the administrative penalty decision at issue here was dated January 15, 2013. The notice stated, in part, "THIS DECISION BECOMES FINAL UNLESS AN APPEAL IS POSTMARKED BY 1/25/13, OR RECEIVED BY THE IOWA WORKFORCE DEVELOPMENT APPEAL SECTION BY THAT DATE." (Exhibit 8). IWD received McGilvra's appeal on March 12, 2013. The appeal was almost two months after the decision issued and was untimely. Because the appeal was untimely, I do not have jurisdiction to consider the merits of the appeal.

Although not necessary to resolve the case, I note that Iowa law clearly provides for the imposition of the administrative penalties and the facts of this case appear to justify a penalty. The IWD investigator has broad discretion in determining the length of the administrative penalty. In determining the length of the penalty in this case, Investigator Lewis properly considered McGilvry's claims history and his repeated failure to accurately report earnings during the audit period. Therefore, even if the appeal had been timely filed, the administrative penalty would be upheld on the merits.

#### **DECISION**

Mr. McGilvra failed to timely file her appeal from this decision. IWD's decision, dated January 15, 2013, reference 01, is affirmed.

cjs