

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

**Appeal Number: 09-IWDUI-183**  
**OC: 04/06/08**  
**Claimant: Appellant (1)**

**DECISION OF THE ADMINISTRATIVE LAW JUDGE**

**TROY IRBY**  
**76 W. POST RD. NW**  
**CEDAR RAPIDS, IA 52405-4126**

**IOWA WORKFORCE DEVELOPMENT**  
**INVESTIGATIONS AND RECOVERY**  
**1000 EAST GRAND AVENUE**  
**DES MOINES IA 50319-0209**

DAN ANDERSON, 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)

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September 23, 2009

(Dated and Mailed)

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Iowa Code section 96.3-7 – Recovery of Overpayment of Benefits  
Iowa Code section 96.16-4 – Misrepresentation

**STATEMENT OF THE CASE**

Troy Irby filed a timely appeal from a decision issued by Iowa Workforce Development (the Department) dated August 5, 2009, reference 12. In this decision, the Department determined that Mr. Irby was overpaid \$768 in unemployment insurance benefits for five weeks between October 5, 2008 and November 15, 2008. The decision stated that the overpayment resulted from failure to report wages earned with Cambridge Tempositions.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals on August 27, 2009 to schedule a contested case hearing. A hearing was originally scheduled for September 9, 2009. On that date, the representative from the Department appeared, but the appellant did not. The administrative law judge discovered that the Department failed to certify the issue of whether the overpayment was a result of misrepresentation when the case was transmitted for hearing. As a result, a new Notice of Hearing was issued on September 14, 2009 scheduling a hearing for September 22, 2009 and listing the correct issues for hearing.

On September 22, 2009, a telephone appeal hearing was held before Administrative Law Judge Laura Lockard. Investigator Neil Anderson represented the Department and presented testimony. Exhibits A and B were submitted by the Department and admitted into the record as evidence. The appellant did not appear.

### **ISSUES**

Whether the Department correctly determined that the claimant was overpaid unemployment insurance benefits and, if so, whether the amount of overpayment was correctly calculated.

Whether the Department correctly determined that an overpayment was the result of misrepresentation on the part of the claimant.

### **FINDINGS OF FACT**

Troy Irby filed a claim for unemployment benefits with an effective date of April 6, 2008. Mr. Irby made claims for and received unemployment benefits during the fourth quarter of 2008.

The Department conducted a routine audit of Mr. Irby's unemployment claim for the fourth quarter of 2008. Cambridge Tempositions Inc. reported that Mr. Irby earned wages in the weeks ending October 11, October 18, November 1, November 8, and November 15, 2008. When making claims for those weeks, Mr. Irby did not report having earned wages in any of those weeks. Mr. Irby's weekly benefit amount during this time period was \$304. (Exh. A).

The following chart sets out the amounts claimed by Mr. Irby and reported by Cambridge Tempositions, as well as the amount of benefits Mr. Irby received each week and the amount of benefits the Department believes Mr. Irby should have received if his wages were correctly reported.

<i>Week ending</i>	<i>Reported by claimant</i>	<i>Reported by employer</i>	<i>Benefits rec'd</i>	<i>Benefits entitled</i>
10/11	\$0	\$315	\$304	\$65
10/18	\$0	\$329	\$304	\$0
11/1	\$0	\$148	\$304	\$232
11/8	\$0	\$217	\$304	\$163
11/15	\$0	\$88	\$304	\$292

Based on the foregoing, the Department determined that Mr. Irby was overpaid unemployment benefits in the amount of \$768.

After determining the discrepancy between the amounts reported by Mr. Irby and his employer, the Department sent Mr. Irby a preliminary audit notice on July 20, 2009. That notice advised him of the discrepancy and gave him an opportunity to respond. Mr. Irby called Neil Anderson by telephone on July 27, 2009 regarding the preliminary audit notice. Mr. Irby was confused about the notice as he had received two prior overpayment notices in February and March, 2009. Mr. Anderson explained that this overpayment decision covered a different period of time. Mr. Irby did not offer any explanation as to why he had failed to report wages during this time period.

When a claimant makes a claim – either online or over the telephone – one of the questions that is asked is whether the claimant worked during the week being claimed. For all of the weeks in question, Mr. Irby answered “no” to this question. Mr. Irby has had two prior overpayments in December, 1997 that were a result of failure to report wages. On these bases, the Department determined that Mr. Irby’s overpayment was a result of misrepresentation.

On August 5, 2009, the Department issued a decision to Mr. Irby notifying him that he was overpaid by \$768 as a result of misrepresentation.

### **REASONING AND CONCLUSIONS OF LAW**

Under Iowa law, if an individual receives unemployment insurance benefits for which he or she is subsequently determined to be ineligible, IWD must recover those benefits even if the individual acted in good faith and is not otherwise at fault. IWD may recover the overpayment of benefits by requesting payment from the individual directly or by deducting the overpayment from any future benefits payable to the overpaid claimant.<sup>1</sup> If a claimant is overpaid benefits as a result of misrepresentation, IWD may – in addition to recovering the overpayment through direct payment or deduction from future benefits – file a lien for the overpayment amount in favor of the state on the claimant’s real or personal property and rights to property.<sup>2</sup>

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<sup>1</sup> Iowa Code § 96.3(7)(a) (2009).

<sup>2</sup> 871 Iowa Administrative Code (IAC) 96.16(4).

A. Overpayment

Mr. Irby failed to report wages during five weeks that he was employed and earned wages with Cambridge Tempositions. An individual who is partially unemployed may receive unemployment insurance benefits if he is working less than his normal full-time week for an employer and is earning less than his weekly benefit amount plus fifteen dollars.<sup>3</sup> Mr. Irby, then, could have earned up to \$319 in a week and still received some amount of unemployment benefits. If a claimant earns less than the weekly benefit amount plus \$15, benefits are calculated as follows: weekly benefit amount minus the claimant's wages in the week that exceed 25% of the weekly benefit amount.<sup>4</sup>

Applying the formula above, the Department correctly calculated Mr. Irby's overpayment at \$768.

B. Misrepresentation

The Department concluded, based on the fact that Mr. Irby failed entirely to report wages for the five weeks in question and that he has had experience with overpayments as a result of failure to report wages in the past that Mr. Irby's failure to report was not the result of simple error. Mr. Irby did not appear at the hearing and there is no alternate explanation in the record for the repeated failure to report wages. On this basis, the Department's finding regarding misrepresentation must be affirmed.

**DECISION**

Iowa Workforce Development's decision dated August 5, 2009, reference 12 is AFFIRMED. The claimant has been overpaid benefits in the amount of \$768 due to misrepresentation.

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<sup>3</sup> Iowa Code § 96.19(38)(b)(1) (2009).

<sup>4</sup> 871 IAC 24.18.