

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

**Appeal Number:** 09-IWDUI-156  
**OC:** 04/06/08  
**Claimant:** Appellant (1)

**DECISION OF THE ADMINISTRATIVE LAW JUDGE**

**TEQUILA BRAGG**  
**3500 SE 24<sup>th</sup> CT.**  
**DES MOINES, IA 50320**

**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.

Jean M. Davis

(Administrative Law Judge)

September 30, 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**

Tequila Bragg filed a timely appeal from a decision issued by Iowa Workforce Development (the Department) dated July 9, 2009, reference 3. In this decision, the Department determined that Ms. Bragg was overpaid \$771.00 in unemployment insurance benefits for three weeks between October 5, 2008 and October 25, 2008. The decision stated that the overpayment resulted from failure to report wages earned with Quest Corporation.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals on July 30, 2009 to schedule a contested case hearing. A hearing was originally scheduled for August 18, 2009. On that date, the parties appeared however, the Appellant had not received copies of the Department's proposed exhibits. As such, the case was continued and rescheduled for August 31, 2009.

On August 31, 2009, a telephone appeal hearing was held before Administrative Law Judge Jean M. Davis. Investigator Irma Lewis represented the Department and presented testimony. Exhibit A submitted by the Department and admitted into the record as evidence. The appellant appeared and was self represented. The Appellant also testified.

### **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**

Tequila Bragg filed a claim for unemployment benefits with an effective date of May 18, 2008. Ms. Bragg made claims for and received unemployment benefits during the month of October 2008.

The Department conducted a routine audit of Ms. Bragg's unemployment claim for the fourth quarter of 2008. Quest Corporation reported that Ms. Bragg earned wages in the weeks ending October 11, October 18, and October 25, 2008. When making claims for those weeks, Ms. Bragg did not report having earned wages in any of those weeks. Ms. Bragg's weekly benefit amount during this time period was \$257.00. (Exh. A).

In October 2008, Ms. Bragg worked for and received earned income from the Qwest Corporation. The following chart sets out the amounts claimed by Ms. Bragg and reported by Quest Corporation, as well as the amount of benefits Ms. Bragg received each week and the amount of benefits the Department believes Ms. Bragg should have received if her 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	\$408	\$257	\$0
10/18	\$0	\$408	\$257	\$0
10/25	\$0	\$408	\$257	\$0
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Based on the foregoing, the Department determined that Ms. Bragg was overpaid unemployment benefits in the amount of \$771.00

After determining the discrepancy between the amounts reported by Ms. Bragg and her employer, the Department sent Ms. Bragg a preliminary audit notice on June 15, 2008. That notice advised her of the discrepancy and gave her an opportunity to respond. Ms. Bragg did not respond to the preliminary findings as she testified that she did not receive the notice.

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, Ms. Bragg answered “no” to this question. Ms. Bragg testified that she thought she could claim benefits until she received her first pay check.

On July 9, 2009, the Department issued a decision to Ms. Bragg notifying her that she was overpaid by \$771.00 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

Ms. Bragg failed to report wages during three weeks that she was employed and earned wages with Qwest Corporation. 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> Ms. Bragg's income, as reported by Qwest Corporation, caused her to be ineligible for unemployment benefits during the weeks she was working. Applying the formula above, the Department correctly calculated Ms. Bragg's overpayment at \$771.00.

B. Misrepresentation

The Department concluded, based on the fact that Ms. Bragg reported to the Department that she was not working during the weeks in question and that she failed to report earning for the weeks in question. Ms. Bragg testified that she thought she could receive benefits until she received her first pay check from her employer. Ms. Bragg's belief that she could work and still receive full unemployment benefits is in error. Ms. Bragg never reported her earnings to the Department and affirmatively answered "no" to the question asking her if she worked during the weeks she claimed benefits. In addition, for at least one of the weeks, Ms. Bragg answered "no" to the question about earnings even though she received her pay check the day before she completed her telephone report with the Department. On this record, the Department's determination that the overpayment was due to misrepresentation must be affirmed.

**DECISION**

Iowa Workforce Development's decision dated July 9, 2009, reference 3 is AFFIRMED. The claimant has been overpaid benefits in the amount of \$771.00 due to misrepresentation.

jmd

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