

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

**Appeal Number:** 09-IWDUI-160  
**OC:** 07/20/08  
**Claimant:** Appellant (1)

**DECISION OF THE ADMINISTRATIVE LAW JUDGE**

**HEIDI L. BUTLER**  
**403 WESTWINDS DR.**  
**IOWA CITY, IA 50319**

**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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August 18, 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**

Heidi Butler filed an appeal from a decision issued by Iowa Workforce Development (the Department) dated July 9, 2009, reference 03. In this decision, the Department determined that Ms. Butler was overpaid unemployment insurance benefits in the amount of \$7009 from the weeks between July 27, 2008 and January 24, 2009. The decision stated that the overpayment resulted from the claimant failing to report wages earned with Wal-Mart.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals on July 30, 2009 for scheduling of a contested case hearing. A Notice of Telephone Hearing was mailed to all parties on July 31, 2009. On August 17, 2009, a telephone appeal hearing was held before Administrative Law Judge Kerry Anderson. Investigator Neil Anderson represented the Department and presented testimony. He submitted Exhibit A, a packet of documents with pages numbered 1-15, which was admitted into evidence. Heidi Butler appeared and participated on her own behalf.

### ISSUES

Whether IWD correctly determined that the claimant was overpaid unemployment insurance benefits.

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

### FINDINGS OF FACT

Heidi Butler filed a claim for unemployment benefits with an effective date of July 9, 2009. Ms. Butler made claims for and received unemployment benefits during the third and fourth quarters of 2008 and the first quarter of 2009.

IWD conducted a routine audit of Ms. Butler's unemployment claim for the third and fourth quarters of 2008 and the first quarter of 2009. Wal-Mart Stores, Inc. reported that Ms. Butler earned wages each week beginning with the week ending August 2, 2008 through the week ending January 24, 2009. Ms. Butler did not report having worked during any of these weeks.

The following chart sets Ms. Butler's failure to report wages and those reported by Wal-Mart, as well as the amount of benefits Ms. Butler received each week and the amount of benefits the Department believes Ms. Butler should have received if her wages had been 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>
08/02/08		\$288	\$375	\$180
08/09/08		\$216	\$375	\$252
08/16/08		\$216	\$375	\$252
08/23/08		\$461	\$375	\$0
08/30/08		\$461	\$375	\$0
09/06/08		\$346	\$375	\$122
09/13/08		\$346	\$375	\$122
09/20/08		\$343	\$375	\$125
09/27/08		\$343	\$375	\$125
10/04/08		\$338	\$375	\$130

10/11/08	\$338	\$375	\$130
10/18/08	\$373	\$375	\$95
10/25/08	\$373	\$375	\$95
11/01/08	\$338	\$375	\$130
11/08/08	\$338	\$375	\$130
11/15/08	\$335	\$375	\$133
11/22/08	\$335	\$375	\$133
11/29/08	\$547	\$375	\$0
12/06/08	\$547	\$375	\$0
12/13/08	\$352	\$375	\$116
12/20/08	\$352	\$375	\$116
12/27/08	\$406	\$375	\$0
01/03/09	\$406	\$375	\$0
01/10/09	\$342	\$375	\$126
01/17/09	\$342	\$375	\$126
01/24/09	\$365	\$375	\$103

Based on the foregoing, the Department determined that Ms. Creighton was overpaid unemployment benefits in the amount of \$7009.

After determining the discrepancy between the amounts reported by Ms. Butler and her employer, the Department sent Ms. Butler a preliminary audit notice on May 29, 2009. That notice advised her of the discrepancy and gave her an opportunity to respond. Ms. Butler faxed a letter to Investigator Neil Anderson. Ms. Butler argued that she was illegally discharged from her employment at the University of Iowa and she was therefore “willfully and illegally robbed of [her] primary source of income and that she therefore deserved the benefits she received.

Mr. Anderson responded to Ms. Butler on June 8, 2009 explaining that she was required to report her wages earned with Wal-Mart while she was receiving unemployment benefits after her separation from the University of Iowa. Mr. Anderson also explained to Ms. Butler that her current unemployment claim would end July 18, 2009. Mr. Anderson noted Ms. Butler could file a new claim for benefits between July 20, 2009 and October 2, 2009.

On July 9, 2009, the Department issued a decision to Ms. Butler notifying her that she was overpaid in the amount of \$7009 as a result of misrepresentation. Ms. Butler filed a timely appeal. In her appeal letter, Ms. Butler argued that she has paid into Social Security for years and was illegally terminated from her job at the University of Iowa.

## REASONING AND CONCLUSIONS OF LAW

Under Iowa law, Iowa Workforce Development is charged with the responsibility of recovering any unemployment benefits paid to an individual to which he or she is subsequently determined to be ineligible, 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>

### A. Overpayment

There is no dispute that Ms. Butler failed to report any wages earned from Wal-Mart during the 26-week period in question. Further, the department produced evidence from Wal-Mart that Ms. Butler did earn wages during each week as well as the amount of her earnings. While Ms. Butler continues to dispute that there was overpayment of benefits and the amount of the overpayment, she presented no evidence disputing the amount of wages she earned or the department’s calculations of the benefits to which she was actually entitled. Rather, Ms. Butler only argued there was no overpayment because she was under the impression she did not have to report earnings from Wal-Mart. I accept as credible the evidence the Department presented regarding Ms. Butler’s wages during the weeks in question.

An individual who is partially unemployed may receive unemployment insurance benefits if she is working less than her normal full-time week for an employer and is earning less than her weekly benefit amount plus fifteen dollars.<sup>3</sup> Ms. Butler, then, could have earned up to \$390 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> Again, while Ms. Butler contests the amount of the overpayment, she presented no evidence of any errors in the department’s calculations. Therefore, applying the formula above, the Department correctly calculated Ms. Butler’s overpayment at \$7009.

### B. Misrepresentation

The Department concluded, based on the fact that the Ms. Butler answered “no” to the question “Did you work this week?” each of the 26 weeks she reported, that the overpayment of benefits was not the result of simple error. Ms. Butler, on the other hand, argued that she thought the question pertained only to whether she worked at the University of Iowa; not for any other employer.

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1 Iowa Code § 96.3(7)(a) (2009).

2 871 Iowa Administrative Code (IAC) 96.16(4).

3 Iowa Code § 96.19(38)(b)(1) (2009).

4 871 IAC 24.18.

I find Ms. Butler's statement that she was unaware she was required to report wages earned through part-time employment not credible. The question asked each week when a claimant calls in could not be simpler: "Did you work this week?" The question is not limited in any way. Additionally, Iowa Workforce Development provides all claimants with a pamphlet of facts about unemployment insurance benefits which specifically states that earnings from all part-time employment must be reported. Ms. Butler first testified she did not receive the pamphlet then that she might have received the same but did not review it and finally, that she did not receive the documents.

Finally, the letter faxed to Investigator Anderson by Ms. Butler in response to the Preliminary Audit notice makes it clear that Ms. Butler feels she was mistreated by the University of Iowa and she sees the receipt of unemployment benefits, whether she was entitled to them or not, as some type of "rough justice" for that mistreatment.

Under the facts of this case, there is sufficient evidence to believe the overpayment of benefits to Ms. Butler was due to misrepresentation on her part.

### **DECISION**

Iowa Workforce Development's decision dated July 9, 2009 is AFFIRMED. The claimant has been overpaid benefits in the amount of \$7009 due to misrepresentation.

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