

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**ROBERT A POLLITT**  
Claimant

**APPEAL NO. 07A-UI-03807-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BFC ELECTRIC CO LC**  
Employer

**OC: 12-17-06 R: 03  
Claimant: Respondent (4)**

Section 96.4-3 - Able and Available  
Section 96.3-7 - Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the April 11, 2007, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on April 24, 2007. The claimant did participate. The employer did participate through Cindy Hutchins, Administrative Assistant and (representative) Andrew Hart, Plant Manager.

**ISSUES:**

Is the claimant able to and available for work including whether the claimant is still employed at the same hours and wages?

Has the claimant been overpaid any unemployment insurance benefits?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a fuel preparer full time beginning July 10, 2006 through date of hearing as the claimant remains employed.

The claimant was laid off from December 17, 2006 through January 2, 2007. From February 21, 2007 through March 1, 2007, the claimant was laid off due to lack of work. From March 5, 2007 through March 9, 2007, the claimant was off work on pre-approved vacation. From March 12, 2007 through March 19, 2007, the claimant was laid off due to lack of work. Continued work was available for the claimant again beginning on March 19, 2007. The claimant asked Mr. Hart for time off beginning March 19 to work on his own construction business and to perform home repairs. The claimant was granted time off and returned to work on April 2, 2007.

Claimant has received unemployment benefits since filing a claim with an effective date of December 17, 2006.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work for the following periods. The claimant was not able to and available for work from March 5, 2007 through March 9, 2007 and after March 19, 2007 through April 2, 2007.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.22(2)j(1)(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

871 IAC 24.23(10) provides:

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

The claimant requested and was given a leave of absence to take a vacation and to perform work on his own construction business and to engage in home repair. Accordingly, benefits are denied for the benefit weeks ending March 10, 2007, March 24, 2007 and March 31, 2007.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because claimant's separation was disqualifying, benefits were paid to which claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The April 11, 2007, reference 01, decision is modified in favor of the appellant. The claimant is not able to work and available for work effective for the benefit weeks ending March 10, March 24 and March 31, 2007. Claimant is overpaid benefits in the amount of \$864.00.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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