

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WANDA S SCHMITZ**  
Claimant

**APPEAL NO. 07A-UI-01724-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TPI**  
Employer

**OC: 01-07-07 R: 04  
Claimant: Respondent (4)**

Iowa Code § 96.4-3 – Able and Available  
Iowa Code § 96.5(1) – Voluntary Leaving - Layoff  
Iowa Code § 96.3(7) - Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the February 13, 2007, reference 03, decision that allowed benefits. After due notice was issued, a hearing was held on March 20, 2007 and March 21, 2007. The claimant did participate during the March 20 hearing but did not participate during the March 21, hearing. The employer did participate through J.T. Breslin, Human Resources Manager. Employer's Exhibits One and Two were entered and received.

**ISSUE:**

Was the claimant able to and available for work from December 20, 2006 through February 5, 2007?

Was the claimant laid off effective February 5, 2007?

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 forming operator full time beginning June 16, 2006 through February 5, 2007, when she was laid off due to a reduction in force layoff. Prior to being laid off, the claimant went on medical disability leave due to her doctor taking her off work as a result of her pregnancy. The claimant's doctor provided her with a work restriction against any work beginning December 20, 2006. The claimant's restriction against any work was due to her pregnancy, not due to any work related injury. The claimant was released to return to work with a 20-pound work restriction on February 5, 2007, the same day she was laid off due to a reduction in force.

Employer's Exhibit Two indicates clearly that the claimant has received short-term disability payments from December 20 through February 5 in the total amount of \$1,974.99. None of the claimant's short-term disability payments were reported by her during her weekly call in for benefits. Employer's Exhibit Two indicates that the claimant did receive all of the short-term disability benefits.

The claimant currently believes she is able to do office work to accommodate her lifting restriction of 20 pounds and her limited hours.

Claimant has received unemployment benefits since filing a claim with an effective date of January 7, 2007.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was temporarily separated from her employment without good cause attributable to the employer from December 20, 2006 until February 5, 2007.

Iowa Code section 96.5-1-d provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

871 IAC 24.25(35) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

The claimant was not able to work due to a doctor's restriction prohibiting any work from December 20 through February 5, 2007. She was released to return to part time work with a 20-pound lifting restriction on February 5, 2007 and was laid off work that day. Accordingly, the separation from December 20, 2006 through February 5, 2007 is without good cause attributable to the employer and benefits must be denied during that time period.

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work effective December 20, 2006 through February 5, 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(1)a 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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

871 IAC 24.23(35) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(35) Where the claimant is not able to work and is under the care of a physician and has not been released as being able to work.

Inasmuch as the pregnancy was not work-related and the treating physician did release the claimant to return to work until February 5, 2007, and then with restrictions, the claimant has not established ability to work between December 20, 2006 and February 5, 2007. Benefits are withheld until February 5, 2007.

For the reasons that follow, the administrative law judge concludes the claimant was laid off due to a lack of work effective February 5, 2007.

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

The claimant was released to return to work on February 5, 2007, albeit with restrictions, but was laid off that same day. Therefore, the separation on February 5, 2007 was attributable to a lack of work by the employer. Benefits are allowed effective February 5, 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 February 13, 2007, reference 03, decision is modified in favor of the appellant. The claimant was not able to or available for work from December 20, 2006 through February 5, 2007. The claimant was laid off due to a lack of work effective February 5, 2007. Benefits are allowed effective February 5, 2007, provided the claimant is otherwise eligible. Claimant is overpaid benefits in the amount of \$820.00.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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