

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROBERT THARRINGTON**  
Claimant

**APPEAL NO: 13A-UI-13192-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**L A LEASING INC**  
Employer

**OC: 03/24/13**  
**Claimant: Respondent (4)**

Iowa Code § 96.4(3) – Availability for Work  
Iowa Code § 96.3(7) – Overpayment of Benefits

**STATEMENT OF THE CASE:**

The employer appealed a representative's November 22, 2013 determination (reference 02) that held the claimant eligible to receive benefits as of October 20, 2013, because even though he still worked part time, he was considered available for work. The claimant participated at the December 18 hearing. Colleen McGuinty, the unemployment insurance benefits administrator, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant was not available for work and ineligible to receive benefits for the weeks ending October 26 through November 9, 23, and December 7 and 14, 2013.

**ISSUES:**

Was the claimant available for work between October 20 and December 21, 2013?

Has the claimant been overpaid benefits for the weeks ending October 26 through December 14, 2013?

**FINDINGS OF FACT:**

The employer assigned the claimant to an assignment on October 5, 2013. The first two weeks, the claimant worked more than 40 hours at this assignment. The week of October 20 through 26, 2013, the claimant only worked three hours for this client and earned gross wages of \$24. The client sent the claimant home when there was no line for the claimant to do. The claimant also had problems getting childcare for his two special needs children. It was extremely difficult to find anyone to take care of his children at 6 a.m. The employer received information that the claimant could have worked 40 hours the week ending October 26, but did not. The claimant filed a claim for the week ending October 26.

The claimant did not work any hours during the week ending November 2. The claimant notified the employer on October 28 and 29 that he was unable to work. On November 7, the claimant notified the client that he was unable to work because he did not have anyone to take care of his children. The claimant did not work or earn any wages the week ending November 9. The

employer understood the claimant could have worked these two weeks but did not. The claimant filed claims for the week ending November 2 and 9. He understood he was laid off from work these weeks and started looking for another job.

The claimant worked 19 hours the week ending November 16. He notified the client on November 11 and 13 that he was unable to work. The claimant worked eight hours the week ending November 23. He called the client on November 21 to report he was unable to work this day. The claimant filed claims for the weeks ending November 16 and 23.

During the week ending November 30, the claimant worked 16.5 hours. He notified the employer on November 26 that he was unable to work because of daycare issues. The claimant filed a claim for this week.

During the week ending December 7, 2013, the claimant worked 8.5 hours. He filed a claim for benefits for this week. The employer understood the claimant could have worked 40 hours, but did not. During the week ending December 14, the claimant worked 8.5 hours. He notified the employer that he was unable to work on December 12 because he was hospitalized. The claimant filed a claim for the week ending December 14. On December 16, 2013, the claimant resigned because he had accepted another job.

The claimant did not go to work every day because of on-going child care issues. When he did not get a call to work, he did not report to work.

The claimant filed weekly claims and received benefits as follows:

Weekending	Wages reported	Benefits Received
10/26/13	00	\$366
11/02/13	00	366
11/09/13	00	366
11/16/13	\$152	305
11/23/13	64	366
11/30/13	\$132	325
12/07/13	68	366
12/14/13	68	366
12/21/13	\$272	185

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

Each week a claimant files a claim for benefits, he must be able to and available for work. Iowa Code § 96.4(3). The law presumes a claimant is not available for work and is ineligible to receive benefits when he fails to work the major portion of a workweek for his then regular employer. 871 IAC 24.23(29).

The claimant admitted he did not report to work some days because of childcare issues. He did not keep a record of the days he did not report to work or of the days he reported and was sent home because the client did not have work for him to do. The employer understood the claimant could have worked 40 hours each week, but did not. Since the client did not participate at the hearing and the claimant did not keep a record of the days he reported to work and was sent home or sent home early, it is difficult to determine the number of hours the claimant could have worked each week.

While the evidence indicates the employer's client had a slowdown in work, the claimant also acknowledged he had childcare issues. A claimant is required to establish his availability for work for each week he files claim. The claimant established that he was available to work the majority of the week for the weeks ending November 16, 30 and December 21. As a result, he is eligible to receive benefits for these weeks.

For the weeks ending October 26, November 2, 9, 23, December 7 and 14, the claimant did not establish his availability to work the majority of these weeks because he either had childcare issues, had appointments for his children, was looking for another job or did not report to work at the client's assignment. As a result, the claimant is not eligible to receive benefits for the weeks ending October 26 through November 9, November 23, and December 7 and 14, 2013.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3(7). The claimant has been overpaid \$2196 in benefits he received for the above weeks.

**DECISION:**

The representative's November 22, 2013 determination (reference 02) is modified in the employer's favor. The claimant established he was available for work during the weeks ending November 16, 30, and December 21, 2013. He is eligible to receive benefits for these weeks. For the weeks ending October 26 through November 9, November 23 and December 7 and 14, the claimant did not establish his availability for work and is not eligible to receive benefits for these weeks. As a result, he has been overpaid \$2196 in benefits he received for these weeks.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs