

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

**Appeal Number: 11IWDUI065-66
11IWDUI078-79**

OC: 7/11/10

Claimant: Appellant (2)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

**STEPHANIE MYERS
257 38TH STREET SE, APT. 11
CEDAR RAPIDS, IA 52403-1115**

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 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

**IOWA WORKFORCE DEVELOPMENT
INVESTIGATIONS AND RECOVERY
150 DES MOINES STREET
DES MOINES IA 50309**

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.

JOSEPH WALSH, IWD
ROBERT WILSON, ATTY

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.

(Administrative Law Judge)

June 28, 2011

(Decision Dated & Mailed)

STATEMENT OF THE CASE

Stephanie Myers filed appeals from four decisions issued by Iowa Workforce Development (the Department). In the first decision, dated January 3, 2011 (reference 05), the Department determined that Ms. Myers was ineligible to receive unemployment insurance benefits beginning November 28, 2010. The decision states that the disqualification is a result of Ms. Myers informing her employer that she was under a doctor's care and unable to work starting on that date. In the second decision, dated January 5, 2011 (reference 06), the Department determined that Ms. Myers was overpaid \$768 in unemployment insurance benefits for four weeks between November 28, 2010 and December 25, 2010. The decision states that the overpayment is a result of the January 3, 2011 decision. In the third decision, dated January 24, 2011 (reference 08), the Department determined that Ms. Myers was ineligible to receive unemployment insurance benefits effective July 11, 2010. The decision states that, according to Ms.

Myers' physician, she was unable to perform work as of that date. In the fourth decision, dated January 26, 2011 (reference 09), the Department determined that Ms. Myers was overpaid \$2,544 in unemployment insurance benefits for 15 weeks between July 11, 2010 and November 27, 2010. The decision states that the overpayment is a result of the January 24, 2011 decision disqualifying Ms. Myers from receiving benefits.

Two of the appeals were transmitted from Workforce Development to the Department of Inspections and Appeals on March 10, 2011 to schedule a contested case hearing. The other two appeals were transmitted on April 7, 2011. The cases were originally set for two separate hearing dates, but were consolidated upon the appellant's request. A telephone hearing was held on June 3, 2011 before Administrative Law Judge Laura Lockard. Investigator Irma Lewis represented the Department and presented testimony. Attorney Robert Wilson represented appellant Stephanie Myers, who appeared and testified. Exhibits A through M were submitted by the Department and admitted into the record as evidence. The appellant submitted Exhibit 1, which was admitted as evidence.

ISSUES

1. Whether the Department correctly determined that the appellant was ineligible to receive unemployment insurance benefits.
2. Whether the Department correctly determined that the appellant was overpaid unemployment insurance benefits and, if so, whether the overpayment was correctly calculated.
3. Whether the Department correctly determined that the overpayment was a result of misrepresentation.

FINDINGS OF FACT

Stephanie Myers filed a claim for unemployment insurance benefits with an effective date of July 11, 2010. The claim was filed after she ended employment with Petco. Ms. Myers made claims for and received unemployment insurance benefits during various weeks between the week ending July 24, 2010 and the week ending December 25, 2010.

Ms. Myers began working for the Cedar Valley Human Society (CVHS) in approximately September or October, 2010. Ms. Myers was a dog handler, which involved grooming, feeding, cleaning, and vaccinating animals. She worked between 17 and 26 hours per week. She also had another job at Nutro Products at that time, which she has had for approximately six years. Ms. Myers works at Nutro Products a maximum of eight hours per week. (Myers testimony).

When Ms. Myers began working at CVHS, she was told she would not have to be involved in euthanizing animals. She would not have taken the job if she had been informed she would have duties related to euthanasia. After she accepted the job, she was required on occasion to participate in the euthanasia process. Although she was not ever directly responsible for administering the drugs to animals, she was required to

restrain the animals during the procedure and to help carry bodies to the crematory. (Myers testimony).

Ms. Myers has a diagnosis of, among other things, PTSD. When she began being involved with euthanasia at CVHS, it caused her to begin having problems, such as sleepless nights. Ms. Myers was receiving mental health treatment at the Abbe Center for Community Mental Health from Dr. Ali Safdar and Dr. Ronald Nelson during this time. (Myers testimony; Exh. 1).

On November 15, 2010, Ms. Myers sent an e-mail to Zach Melton, the executive director of CVHS, indicating that pursuant to her doctor's orders she would be off work until released. (Exh. A, p. 4). Mr. Melton and Ms. Myers had an e-mail exchange in which Mr. Melton requested clarification regarding what this meant. Ms. Myers responded that she would know more after her MRI. On November 18, 2010, Mr. Melton sent an e-mail to Ms. Myers requesting an update regarding her work status. Ms. Myers replied the same day, indicating that she was instructed by her doctor not to disclose what is wrong with her. She also wrote that it had "nothing to do with CVHS." (Exh A, pp. 3-4).

Upon Mr. Melton's request, Ms. Myers submitted a statement from Dr. Safdar to CVHS. It was dated November 15, 2010 and read:

To Whom it May Concern —

Due to Ms. Myers['] medical condition, she will need to refrain from working until after her appt. 12/8/10.

(Exh. A, p. 1).

On December 8, 2010, Dr. Safdar wrote another statement for Ms. Myers, which she submitted to Mr. Melton. The statement indicated, "I saw Stephanie today. She is still not coping and functioning well. Her leave of absence needs to be extended another 6-8 weeks." (Exh. A, pp. 7-8). On December 27, 2010, Ms. Myers resigned from her position at CVHS in an e-mail to Mr. Melton. (Exh. A, p. 10). Ms. Myers continued working at Nutro Products during the time that she was not reporting for work at CVHS and after her resignation from CVHS. (Myers testimony).

At some point prior to Ms. Myers resigning her position at CVHS, her employer reported to the Department that Ms. Myers was drawing unemployment and was not coming to work because of her assertions that she was under a doctor's care. Investigator Irma Lewis made contact with Ms. Myers and asked her whether she was available for work. Ms. Myers told Ms. Lewis that she could work, but did not answer Ms. Lewis's question regarding why, if she was able to work, she had stopped going to work at CVHS. (Lewis testimony).

On December 23, 2010, Ms. Lewis mailed a Request for Medical Report to Ms. Myers and requested that Ms. Myers have her doctor fill out the report and return it by December 31, 2010. (Exh. B-3; Lewis testimony). Ms. Myers' doctor was on vacation when she received the request, therefore Ms. Lewis extended the deadline for the report to be returned.

On January 17, 2011, Dr. Safdar filled out the medical report that had been requested by the Department. Dr. Safdar indicated in the report that Ms. Myers' diagnoses are mood disorder, NOS, anxiety disorder, and PTSD. Dr. Safdar also indicated that for four to six months prior to December 23, 2010 Ms. Myers could not perform her occupation. Dr. Safdar did not answer the questions on the report regarding whether the condition was employment related or whether he advised Ms. Myers to quit her job. Dr. Safdar indicated that Ms. Myers had no restrictions that would prevent her from returning to her former occupation. (Exh. B-2).

On March 31, 2011, Dr. Safdar wrote another letter regarding Ms. Myers:

During the fall of 2010 my client, Stephanie Myers, worked at the Cedar Valley Human Society for 2 to 3 months and resigned in December 2010.

The client resigned not because she was unable to perform the general tasks related to her position, but because of a very negative emotional response to the large number of euthanasia cases at the Humane Society in the fall. Because of the client's history of emotional problems, the experience of dealing with numerous euthanasia cases apparently led to an increase in anxiety and depression, and made it very difficult for her to function in her job.

(Exh. 1). The letter was also signed by Ronald Nelson, a licensed clinical psychologist.

In two decisions, the Department determined that Ms. Myers was ineligible to receive unemployment insurance benefits beginning July 11, 2010 and continuing through December, 2010. The Department also issued two decisions that found Ms. Myers was overpaid a total of \$3,312 because of the decisions finding she was not able and available for work. The Department determined in both overpayment decisions that the overpayments were a result of misrepresentation. (Exh. E, G, I, K).

REASONING AND CONCLUSIONS OF LAW

In order to receive unemployment insurance benefits, an individual must be able to work, available for work, and be earnestly and actively seeking work.¹ The Department's regulations mandate that an individual be physically and mentally able to work in some gainful employment. In order to be determined able to work,

the individual must be physically able to work, not necessarily in the individual's customary occupation, but able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which the individual resides.²

¹ Iowa Code § 96.4(3) (2011).

² 871 Iowa Administrative Code 24.22(1)(b).

A statement of a health care professional is taken as prima facie evidence of the ability of the individual to perform the work required.³ The burden is on the claimant to establish that she is able and available to work.⁴

The Department issued two decisions that disqualified Ms. Myers from receiving unemployment insurance benefits. The first, dated January 3, 2011, disqualified her beginning November 28, 2010. The second, dated January 24, 2011, disqualified her beginning July 11, 2010.

The evidence in these appeals supports the factual conclusion that from approximately mid-November, 2010 through the time she resigned in late December, 2010, Ms. Myers was unable to perform her duties as a dog handler at CVHS. The inability to perform in this job related solely to the duties connected to euthanizing animals at the shelter. While the medical report that Dr. Safdar provided to the Department indicated that Ms. Myers was unable to perform her occupation for four to six months prior to December 23, 2010, the letter that Dr. Safdar and Dr. Nelson authored in March, 2011 clarified their position. In that letter, the doctors explained that Ms. Myers was not unable to perform the general tasks related to her employment at CVHS, but rather had a very negative emotional response to the large number of euthanasia cases that she was exposed to during her employment there. The letter explains that dealing with the euthanasia process led to an increase in anxiety and depression related to Ms. Myers' mental health issues.

It is important to note that the more general medical statements that Dr. Safdar made were all made in response to requests by Ms. Myers' employer. In this context, Dr. Safdar's statements that Ms. Myers must refrain from working and that she needed an extended leave of absence are best understood as indications that she could not work in her job at CVHS during that time period.

Complicating matters for both Ms. Myers' employer and for the Department was the fact that Ms. Myers did not wish to disclose why she was no longer able to work at CVHS. Ms. Myers asserted at hearing that she believed she did not have to disclose this information to her employer. While whether Ms. Myers disclosed her medical condition to her employer might be relevant in a different context, it is not relevant for purposes of determining whether she was able to work during the relevant time period. While Ms. Myers denied to her employer that her not working had anything to do with CVHS, I found credible her explanation as to why she did not disclose the information; namely, that she felt the information was private.

The question of whether an individual is able to work for purposes of eligibility for unemployment insurance benefits relates to the individual's ability to work in the labor market generally, not specifically to the individual's ability to work in her customary occupation. For this reason, I conclude that Ms. Myers was able to work during the time period in question.⁵ The Department's decisions disqualifying Ms. Myers from receiving

³ 871 IAC 24.22(1).

⁴ 871 IAC 24.22.

⁵ The Department apparently decided to begin the disqualification in July, 2010 based upon the

benefits based on a determination that she was unable to work are in error.

I note that these appeals had nothing to do with any determination regarding Ms. Myers' separation from her employment with CVHS. During the time period at issue here (July, 2010 through December, 2010), Ms. Myers was drawing benefits based on separation from a previous employer. This decision expresses no opinion regarding how Ms. Myers' separation from her employment with CVHS might impact on her eligibility for benefits.

The overpayment decisions the Department issued were both based upon the disqualification periods imposed by the January 3 and January 24, 2011 decisions. Since those decisions were in error, there is no overpayment.

DECISION

Iowa Workforce Development's decisions dated January 3, January 5, January 24, and January 26, 2011 (references 05, 06, 08, and 09) are REVERSED. The appellant was able to work during the relevant time period. The appellant was not overpaid unemployment benefits. The Department shall take any action necessary to implement this decision.

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medical report from Dr. Safdar which indicated that Ms. Myers was not able to work for four to six months prior to December, 2010. As noted above, that statement was elaborated upon in the March, 2011 letter authored by Dr. Safdar and Dr. Nelson. Ms. Myers was working for CVHS until approximately mid-November, 2010, so there is no credible evidence in the record that a disqualification, even if any were warranted, should have begun prior to that point.