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

DECISION OF THE ADMINISTRATIVE LAW JUDGE

AMBER MCGRUDER
705 E. 15TH ST. S.
NEWTON, IA 50208

IOWA WORKFORCE DEVELOPMENT
QUALITY CONTROL
1000 E. GRAND AVE.
DES MOINES IA 50319

NEWTON CARE LLC/HERITAGE MANOR
1743 S. 8TH AVE. E.
NEWTON, IA 50208

JOE WALSH, IWD

Appeal Number: 11IWDUI328-29
OC: 1/23/11
Claimant: Appellant (4)

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

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.

(Administrative Law Judge)

April 20, 2012
(Decision Dated & Mailed)

STATEMENT OF THE CASE

Amber McGruder filed an appeal from two decisions issued by Iowa Workforce Development (the Department). In the first decision, dated October 14, 2011, reference 02, the Department determined that McGruder was ineligible to receive unemployment insurance benefits effective January 23, 2011. The decision states that the ineligibility is a result of McGruder requesting and being granted a leave of absence, rendering her unavailable for work. In the second decision, dated October 17, 2011, reference 03, the Department determined that McGruder was overpaid $5,325 in unemployment insurance benefits for 25 weeks between January 30 and July 23, 2011. The decision states that the overpayment is a result of the October 14, 2011 decision disqualifying McGruder for not being able and available for work.

The case was transmitted from Workforce Development to the Department of

Inspections and Appeals on December 29, 2011 to schedule a contested case hearing. A telephone hearing was originally scheduled for February 24, 2012. The case was continued on that date in order to allow the Appellant's employer, Newton Care LLC/Heritage Manor to receive notice of the hearing. On March 16, 2012, a telephone appeal hearing was held before Administrative Law Judge Laura Lockard. Quality control auditor Ellen Batten represented the Department and presented testimony. The Department submitted Exhibits A through N, which were admitted as evidence in the case. Appellant Amber McGruder appeared and presented testimony. Administrator Dan Schlup represented Newton Care LLC/Heritage Manor (the employer) and testified.

Arrangements were made at the hearing to hold the record open until March 20, 2012 in order for the Appellant to submit documentation from her physician regarding light duty restrictions. Neither the Department nor the employer had any objection to this documentation being admitted. The Appellant timely submitted a letter from her doctor, which is admitted as Exhibit 1.

ISSUES

1. Whether the Department correctly determined that the Claimant was voluntarily unemployed and therefore not available for work.

2. Whether the Department correctly determined that the Claimant was overpaid unemployment insurance benefits and, if so, whether the overpayment was correctly calculated.

FINDINGS OF FACT

Amber McGruder began working at Heritage Manor in a housekeeping/laundry position in May, 2007. (Exh. H). She was still employed at Heritage Manor in January, 2011 and was pregnant at that time. At some point during the month of January, 2011, McGruder's doctor restricted her to light duty work. McGruder talked to Matt Edwards, an administrator at Heritage Manor, about the restrictions. Edwards informed McGruder that the employer could not accommodate light duty restrictions. Edwards informed McGruder that she would have to cease working there, but could come back after she had the baby. (McGruder testimony).

McGruder filled out paperwork to go on Family Medical Leave Act (FMLA) leave during her pregnancy. (McGruder testimony). The FMLA documentation that McGruder submitted indicated that the reason for leave was that she was pregnant and having pelvic pain and it would be necessary for her to work light duty until the delivery. The treatment listed on the form included monthly obstetrician visits and light duty work. (Schlup testimony). At the time that she completed the FMLA leave request form, McGruder did not know precisely when she would be able to return to work. (McGruder testimony; Exh. C). McGruder ultimately returned to work at Heritage Manor on July 25, 2011. (Exh. C).

McGruder filed an unemployment insurance claim and received benefits from January

30, 2011 through July 23, 2011. Her weekly benefit amount during that time period was $213. (Exh. L). McGruder searched for work during the time period that she was collecting unemployment insurance benefits; she completed the requisite two job contacts per week that the Department required her to complete. (McGruder testimony).

The Department assigned a quality control auditor to review McGruder's claim in approximately August, 2011. (Exh. N). The employer reported at that time that McGruder's last day worked prior to her "maternity leave" was January 24, 2011. (Exh. E). The Department attempted to contact McGruder to talk with her about the leave of absence from her employment, but was unable to get in contact with her. (Batten testimony).

Daniel Schlup, the current administrator at Heritage Manor, acknowledged at hearing that it was company policy that no light duty work was provided unless the reason the employee needed light duty work was the result of something that occurred on-the-job. McGruder provided documentation to her employer from her doctor dated January 24, 2011 that indicated she was available for light duty work. The employer agrees that there was no work available for McGruder at Heritage Manor from January 24, 2011 until she gave birth. The employer also acknowledges that if McGruder was restricted to light duty work after the birth there would have been no work at Heritage Manor until she was released from the light duty restrictions. (Schlup testimony).

Appellant submitted documentation from her physician, Tereasa Van Zee, indicating that she was on light duty due to pregnancy from January 24 through May 31, 2011. The letter indicates that Appellant delivered by repeat C-section on May 31, 2011 and was "off work for postpartum care" from May 31 through July 25, 2011, due to recovery from the C-section. (Exh. 1).

REASONING AND CONCLUSIONS OF LAW

A. *Availability Disqualification*

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 claimant has the burden of proving that she meets the basic eligibility conditions for benefits, including availability for work.[2] The Department's regulations provide that a claimant is disqualified as unavailable for work if she requests and is granted a leave of absence, as such period is considered to be a period of voluntary unemployment.[3] In this case, the Department concluded that the claimant was not available for work based on its determination that she was granted a leave of absence from work and was voluntarily unemployed.

1 Iowa Code § 96.4(3) (2011).
2 Iowa Code § 96.6(2) (2011).
3 871 Iowa Administrative Code (IAC) 24.22(2)(j); 24.23(10).

While McGruder was technically on medical leave during this time period, her temporary separation from employment was not voluntary on her part. McGruder was restricted to light duty by her doctor as a result of pelvic pain with her pregnancy and her employer informed her that it could not accommodate her need for light duty assignments. The employer has acknowledged that its policy is to not accommodate light duty requests unless the need for the light duty arises from a work-related set of circumstances. There is no evidence to indicate that McGruder would not have continued working if her employer had been able to accommodate her restrictions.

In *Wills v. Employment Appeal Board*, the Iowa Supreme Court addressed a similar set of circumstances.[4] There, the claimant was a pregnant employee working as a nurse's aide who was given a 25-pound lifting restriction from her doctor. At that point, the employer terminated her under a policy of not providing work to any employee with a lifting restriction. An agency representative denied Wills' claim for unemployment compensation, finding that Wills was disqualified from receiving benefits because she voluntarily quit upon her doctor's advice. The Supreme Court reversed the agency's decision, finding no substantial evidence to support the agency's conclusion that Wills voluntarily quit her job. The Court distinguished the case from others where employees voluntarily separated from employment as a result of pregnancy.[5]

While this case deals with a temporary separation from employment, rather than the permanent separation that the Supreme Court addressed in *Wills*, the framework for analysis is identical. Like Wills, McGruder did not intend to become temporarily unemployed; rather, upon learning of her pregnancy-related duty restrictions, her employer informed her that it had no work for her during the time period of those restrictions. There is no evidence whatsoever that McGruder would have declined work during the time that she was restricted to light duty if her employer could have provided her with work that accommodated her restrictions. This is not the type of negotiated leave of absence that the Department's regulations address.

McGruder credibly testified that she was available for work that was consistent with her restrictions during the time period that she was restricted to light duty work. Consequently, she was available for work during that time. The Department's representative at hearing raised a question regarding whether the job searches McGruder was conducting during the time period were for jobs that she would have been able to perform given her duty restriction. This is an entirely different inquiry; the Department did not disqualify McGruder on the basis of insufficient job searches, therefore I need not examine this issue.

I do note, however, that the documentation McGruder provided from her doctor only indicates that she was restricted to light duty from January 24 through May 31, 2011, the date on which she delivered her child. Dr. Van Zee indicates that McGruder was "off work for postpartum care" from May 31 through July 25, 2011. There is no indication that McGruder had been cleared by her physician for any work from May 31 through July 25. The only documentation from her physician describes McGruder's work status

4 447 N.W.2d 137 (Iowa 1989).
5 *Id.* at 138.

as "off work for postpartum care" from May 31 through July 25. McGruder and her employer both testified at hearing that she returned to work on July 25, 2011 with no restrictions. There is not sufficient evidence in the record to conclude that McGruder was available for work from May 31 through July 25.

The Department's decision disqualifying McGruder from receiving benefits is modified. McGruder was available for work from January 24 through May 30, 2011. McGruder was not available for work from May 31 through July 25, 2011.

B. *Overpayment*

Under Iowa law, if an individual receives unemployment insurance benefits for which he or she is subsequently determined to be ineligible, the Department must recover those benefits even if the individual acted in good faith and is not otherwise at fault. The Department 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.[6]

The Department's determination that McGruder was overpaid benefits is premised on its decision that she was ineligible for benefits that she received from the week ending January 30, 2011 through the week ending July 23, 2011. As noted above, that decision is modified. The period of ineligibility for McGruder is reduced to the period from May 31 to July 25, 2011. The overpayment shall be reduced accordingly. McGruder was overpaid benefits from the week ending June 4, 2011 through the week ending July 23, 2011, a period of eight weeks.[7] She received $213 in each of those eight weeks, therefore she was overpaid a total of $1,704.

DECISION

Iowa Workforce Development's decision dated October 14, 2011, reference 02, is MODIFIED. The Appellant is disqualified from receiving unemployment insurance benefits because she was not available for work from May 31, 2011 through July 25, 2011. The Appellant was available for work from January 24, 2011 through May 30, 2011. Iowa Workforce Development's decision dated October 17, 2011, reference 03, is MODIFIED. The Appellant was overpaid a total of $1,704 in unemployment insurance benefits. The Department shall take any action necessary to implement this decision.

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6 Iowa Code § 96.3(7)(a) (2011).

7 With respect to a claimant who is available for work for part of the week, the Department's regulations provide that if the individual is available for the major portion of the work week, the individual is considered to be available. 871 IAC 24.22(2)(h). During the week of May 29 through June 4, McGruder was available only on Sunday and Monday, consequently I find she was unavailable for the major portion of the work week and therefore disqualified from benefits as unavailable for the entire week.