

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PAIGE N LACY**

Claimant

**APPEAL NO: 15A-UI-04901-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KT OF CLEAR LAKE LLC**

Employer

**OC: 08/17/14**

**Claimant: Respondent (2)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

KT of Clear Lake (employer) appealed a representative's April 16, 2015, decision (reference 02) that concluded Paige Lacy (claimant) was eligible to receive unemployment insurance benefits beginning March 22, 2015. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 13, 2015. The claimant participated personally. The employer participated by Shakhawat Hossain, Director of Operations, and Kimberly Roche, Assistant Manager. The employer offered and Exhibit One was received into evidence.

**ISSUE:**

The issue is whether the claimant is able and available for work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked for the employer from January 9, 2015, to March 14, 2015. The claimant's physician released her to work with restrictions on March 14, 2015. On March 14, 2015, the claimant told the employer she did not feel well and asked to leave early. The employer asked her if she would like to return when she was feeling better and she said she would. In early April 2015, the claimant told the employer she was ready to return to work. The employer scheduled her to work on April 7, 8, 9, and 10, 2015. The claimant did not appear for work or notify the employer of her absence on April 7, 9, and 10, 2015. On April 8, 2015, the claimant sent a text saying she could not work. On April 7, 2015, the claimant's physician told the claimant she could not work. The claimant has not been released to return to work with or without restrictions. Work is available for the claimant.

The claimant filed an additional claim for unemployment insurance benefits with an effective date of March 22, 2015. Since March 22, 2015, she has received \$1,080.00 in unemployment insurance benefits.

## REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant is not able or available to return to work.

Iowa Admin. Code r. 871-24.23(1) provides:

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

- (1) An individual who is ill and presently not able to perform work due to illness.

When an employee is ill and unable to perform work due to that illness, she is considered to be unavailable for work. The claimant either told the employer she was not feeling well or restricted from working. She is considered to be unable or unavailable for work after March 22, 2015. The claimant is disqualified from receiving unemployment insurance benefits beginning March 22, 2015.

Iowa Code section 96.3(7)a-b, as amended in 2008, provides:

### 7. Recovery of overpayment of benefits.

a. 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 § 96.8, subsection 5.

b. (1) 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 § 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to § 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This

subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this states pursuant to § 602.10101.

The claimant has received benefits since filing the claim herein. Pursuant to this decision, those benefits may now constitute an overpayment.

**DECISION:**

The representative's April 16, 2015, decision (reference 02) is reversed. The claimant is disqualified from receiving unemployment insurance benefits because she is unable or unavailable for work after March 22, 2015. The claimant has been overpaid unemployment insurance benefits in an amount of \$1,080.00

---

Beth A. Scheetz  
Administrative Law Judge

---

Decision Dated and Mailed

bas/css