

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIMBERLEE OATES
Claimant

APPEAL NO: 13O-UI-11363-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CBS STAFFING LLC
Employer

OC: 06/30/13
Claimant: Appellant (1/R)

Iowa Code § 96.4-3 - Able and Available for Work
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Kimberlee Oates (claimant) appealed an unemployment insurance decision dated July 24, 2013, reference 01, which held that she was not eligible for unemployment insurance benefits because she was still employed with CBS Staffing, LLC (employer) at the same hours and wages as in her original contract of hire. Administrative Law Judge Randy Stephenson conducted an initial hearing on this matter in appeal 13A-UI-08706-ST in which benefits were allowed. The employer appealed the decision indicating it did not participate due to lack of notice. The Employment Appeal Board remanded for a new hearing in an order dated October 7, 2013. The Board incorrectly cited the claimant as the appealing party.

After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 21, 2013. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which she could be contacted, and therefore, did not participate. The employer participated through owner Brad Ortmeier. Employer's Exhibits One and Two were admitted into evidence.

ISSUE:

The issue is whether the claimant is disqualified for being unavailable or unable to work and/or whether she is working the same hours and wages as in her original contract of hire with this employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on August 28, 2012 as a temporary certified nursing assistant. She worked on a shift by shift basis when she advised the employer she was available and wanted work. The claimant had worked full time with the Iowa Jewish Home and did notify the employer when that employment ended.

The claimant filed her claim for unemployment insurance benefits effective June 30, 2013. During July 2013, she was not available six days and scheduled to work 20 shifts on 18 days. The claimant called off on five of those shifts and asked to be replaced on three other shifts. She was late for one shift, left early on another shift and actually worked six shifts.

In August 2012, the claimant advised the employer she was not available on 16 days and was scheduled for six days but called off on three of those. She last worked on August 29, 2013 and did not make herself available after that. The employer contacted her on September 8, 16, 23, 26 and 30, 2013 to offer work but she did not accept. The claimant has just recently started calling the employer to request work.

The employer did provide information as to the claimant's earnings from the week ending July 6, 2013 through the week ending September 21, 2013. This information does not match what the claimant reported when filing her weekly claims. However, this issue was not listed on the hearing notice.

The claimant filed a claim for unemployment insurance benefits effective June 30, 2013 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is able and available for work. For an individual to be eligible to receive benefits, she must be able to work, available to work, and earnestly and actively seeking work. Iowa Code § 96.4-3; 871 IAC 24.22(2). The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979).

The evidence confirms the employer had shifts available but the claimant limited her own availability. She therefore does not meet the availability requirements of the law and benefits are denied.

Because the claimant was not eligible to receive unemployment insurance benefits, she received benefits to which she was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law. Iowa Code § 96.3-7-a.

Since the issue as to whether the claimant had earned but unreported income was not included in the notice of hearing for this case, the case will be remanded for an investigation and determination on that issue.

DECISION:

The unemployment insurance decision dated July 24, 2013, reference 01, is affirmed. The claimant does not meet the availability requirements of the law and does not qualify for unemployment insurance benefits. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue and whether she had earned but unreported income.

Susan D. Ackerman

Decision Dated and Mailed

sda/css