

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LYDIA OCHOA
Claimant

APPEAL NO: 09A-UI-10197-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP
Employer

OC: 02/01/09
Claimant: Respondent (4/R)

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

STATEMENT OF THE CASE:

Cargill Meat Solutions Corporation (employer) appealed an unemployment insurance decision dated July 8, 2009, reference 02, which held that Lydia Ochoa (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 4, 2009. The claimant participated in the hearing. Ike Rocha interpreted on behalf of the claimant. The employer participated through Rachel Watkinson, Human Resources Associate. Employer's Exhibits One through Six were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant is able and available to 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 was hired as a full-time production employee on May 19, 2003 and continues to be employed but is not currently working. She sustained a work-related medical injury for which she was placed on permanent medical restrictions in January 2009. Consequently, the claimant was placed on a "bid walk" since the employer only has a limited number of jobs that fall within her restrictions. She went through the plant with the medical staff and the worker's compensation coordinator to select jobs she would be willing to do if they opened. The medical personnel then assessed which jobs were within the claimant's restrictions. The employer reviews the job possibilities for the claimant each week and she must bid on the job.

She did not work for the employer for a seven-week period in February 2009 and March 2009. However, the employer subsequently realized the claimant had won a bid for a job for which she was not hired and on March 30, 2009 issued a check to her for back pay in the amount of \$3,612.00. The claimant accepted a job of 'save bungs' in March 2009, which was within her

medical restrictions. She was disqualified by her supervisor on April 13, 2009 because she was working too slowly. She accepted a job of 'trim and ham bone' in April 2009 but stopped working at this job also. The claimant accepted a 'fat back trim' job in May 2009 but was again disqualified by her supervisor since she was doing very little work. The employer offered her two jobs on June 1, 2009 but she declined both.

The job list came open again on June 11, 2009 and the claimant qualified for five jobs. She accepted the 'ear trim' job and started on June 22, 2009. However, she disqualified herself from doing the job on July 12, 2009 by telling her supervisor the job caused her pain.

The claimant filed a claim for unemployment insurance benefits effective February 1, 2009 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant is able and available for work. In order for an individual to be eligible to receive unemployment insurance benefits, the evidence in the record must establish that she is able to work, available for work, and earnestly and actively seeking work. See Iowa Code § 96.4(3) and 871 IAC 24.22.

Iowa Code § 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.23(18) provides:

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

(18) Where the claimant's availability for work is unduly limited because such claimant is willing to work only in a specific area although suitable work is available in other areas where the claimant is expected to be available for work.

The claimant has the burden of proof in establishing her ability and availability for work. Davoren v. Iowa Employment Security Commission, 277 N.W.2d 602 (Iowa 1979). She is able to work but does have permanent medical restrictions. The employer has repeatedly offered the claimant jobs which are within her medical restrictions but she either declines the jobs, complains that the job causes her pain or works so slowly that the supervisor has no choice but to disqualify her. The claimant has intentionally limited her ability to work as of July 12, 2009 and does not qualify for benefits after that date.

Iowa Code § 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The unemployment insurance decision dated July 8, 2009, reference 02, is modified in favor of the appellant. The claimant does not meet the availability requirements as of July 12, 2009 and benefits are denied as July 18, 2009. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css