

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NICOLE L TIERNAN**  
Claimant

**APPEAL NO: 09A-UI-10698-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 03/22/09**  
**Claimant: Appellant (5)**

Section 96.4-3 – Able to and Available for Work  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

Nicole L. Tiernan (claimant) appealed a representative's July 14, 2009 decision (reference 01) that gave her a warning for failing to make an active search for work for the week ending July 11, 2009. The claimant appealed this decision because she had not intended to file for and receive benefits this week. The claimant injured her back on Tuesday, July 7 and was unable to work the week ending July 11, 2009. Based on the reasons the claimant appealed, additional issues not mentioned in the representative's decision will be addressed in this decision.

A hearing was held on August 11, 2009. The claimant participated in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Is the claimant able to and available for work for the week ending July 11, 2009?

Has the claimant been overpaid any benefits for the week ending July 11, 2009?

**FINDINGS OF FACT:**

The claimant established a claim for benefits during the week of March 22, 2009. Before the claimant injured her back, she made one job contact during the week ending July 11, 2009. The claimant injured her back on Tuesday, July 7, 2009. She was unable to work or look for the work the rest of the week ending July 11, 2009. The claimant's back did not bother her the week of July 12.

When the claimant filed a claim for the week ending July 11, she wanted to let the Department know she had injured her back. The claimant had not intended to receive benefits for this week because of her back injury. The claimant received regular unemployment insurance benefits in the amount of \$361.00 for this week. She also received \$25.00 from the government's economic stimulus program.

**REASONING AND CONCLUSIONS OF LAW:**

Each week a claimant files a claim for benefits, she must be able to and available for work. Iowa Code § 96.4.3. The law presumes a claimant is not eligible to receive benefits when she is not able to work due to a personal injury. 871 IAC 24.23(34).

The claimant was not eligible to receive benefits for the week ending July 11 because she was unable to and unavailable for work the majority of the week after she injured her back on Tuesday. Since the claimant was unable to work, she should not have filed a claim for benefits.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. The claimant filed a claim for benefits and received \$361.00 in regular benefits and \$25.00 from the government's economic stimulus program. The claimant has been overpaid \$386.00 in benefits she received for the week ending July 11, 2009.

Also, because the claimant filed a claim for the week ending July 11, the warning she received for failing to make two job contacts was warranted.

**DECISION:**

The representative's July 14, 2009 decision (reference 01) is affirmed and modified to the extent that additional issues were addressed that are not favorable to the claimant. The warning the claimant received for the week ending July 11 is warranted because she filed a claim for benefits this week. The claimant is not legally entitled to receive benefits for the week ending July 11, 2009, because she was unable to work that week after she injured her back on Tuesday, July 7. The claimant has been overpaid a total of \$386.00 in benefits she received for the week ending July 11, 2009.

---

Debra L. Wise  
Administrative Law Judge

---

Decision Dated and Mailed

dlw/css