

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBORAH FULLER
Claimant

APPEAL NO. 11A-UI-14466-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 07/04/10
Claimant: Appellant (4-R)

Section 96.4-3 – Able and Available
871 IAC 24.23(1) – Unable to Work/Illness
Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

The claimant appealed from a representative's decision dated October 28, 2011, reference 02, that held she was unable to perform work due to illness and which denied benefits effective July 4, 2010. A hearing was held on December 5, 2011. The claimant and her husband, Michael, participated.

ISSUE:

The issue is whether claimant is able and available to work.

FINDINGS OF FACT:

The administrative law judge, having heard the witness testimony and having considered the evidence in the record, finds that: The claimant filed an unemployment claim effective July 4, 2010. The claimant had recently been laid off as a full-time victim witness coordinator from the Woodbury County, Iowa attorney's office. She began to seek full-time employment.

In March 2011, she was diagnosed with a seizure disorder on top of her mental health bi-polar disorder with a history of migraine headaches. She ceased looking for full-time employment but was willing to consider part-time work thereafter.

In August 2011 she filed an application for Social Security Disability benefits (SSI). She received an award letter dated October 11 that approved her disability effective July 1, 2010. Since there is a five-month waiting period, she was issued back-pay benefits from December 2010 through September 2011 totaling \$8,720, with a monthly award of \$874 beginning October. She is limited to earning \$1,000 a month in order to maintain the benefit level.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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(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.

The administrative law judge concludes the claimant is not eligible for unemployment benefit effective March 1, 2011, because she was no longer able to work full-time employment due to illness.

Claimant worked full-time up to her layoff in July 2010, and she looked for full-time work up to March 2011, when her mental health and physical issues became exacerbated by a seizure disorder that limited her ability to part-time work. In addition, the claimant has an earnings limitation for receiving SSI that precludes full-time employment. Since claimant earned base period wages based on full-time employment, her inability to search for and accept full time employment means she is not able and available for full-time work.

Iowa Code section 96.3-7, 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.

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 section 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 section 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 state pursuant to section 602.10101.

Since claimant received has received benefits on her claim since March 2011, the overpayment issue is remanded to Claims for a decision.

DECISION:

The decision of the representative dated October 28, 2011, reference 02, is modified. The claimant is not able and available for full-time work effective March 1, 2011, due to illness/disability, and benefits are denied. The overpayment issue is remanded.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw