

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KYLE BAZER**  
Claimant

**APPEAL NO: 12A-UI-05130-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TPI IOWA LLC**  
Employer

**OC: 01/15/12**  
**Claimant: Respondent (2/R)**

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

**STATEMENT OF THE CASE:**

TPI Iowa, LLC (employer) appealed an unemployment insurance decision dated May 1, 2012, reference 01, which held that Kyle Bazer (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 May 23, 2012. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which he could be contacted and, therefore, did not participate. The employer participated through Danielle William, human resources coordinator, and Sean Brennan, shift leader. 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 having considered all of the evidence in the record, finds that: The claimant was hired as a full-time production worker on May 3, 2010 and continues to be employed in that same capacity. The employer was in the process of changing out equipment and allowed employees to take a voluntary furlough for seven weeks. The claimant took the furlough and was off work from January 23, 2012 through March 17, 2012. The employer is not contesting the claimant's benefits during the voluntary furlough.

Subsequent to that time, the employer has provided full-time work for its employees but also gave employees the option to take time off without pay. If employees wanted to take the voluntary layoff, the time would not be counted against them. However, employees were not required to take the voluntary layoff, they were never sent home, and could have worked 40 hours each week if they wanted to do so. The claimant volunteered to take time off without pay on the following days: April 1, 2, 3, 4, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 26, 30 and May 4, 9 and 10. Work was available on these dates, but the claimant chose not to work.

The claimant filed a claim for unemployment insurance benefits effective January 15, 2012 and has received benefits after the separation from employment.

### **REASONING AND CONCLUSIONS OF LAW:**

The issue to be determined is whether the claimant meets the availability requirements of the law. In order for an individual to be eligible to receive unemployment insurance benefits, the evidence in the record must establish that he is able to and available for work. See Iowa Code § 96.4(3).

871 IAC 24.23(16) provides:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

871 IAC 24.23(29) provides:

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

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

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 claimant was on a voluntary furlough from January 23, 2012 through March 17, 2012. Subsequent to that date, the employer provided full-time work but the claimant opted to take time off without pay. Consequently, benefits are denied because the claimant does not meet the availability requirements of the law as of March 31, 2012.

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 he 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 May 1, 2012, reference 01, is modified in favor of the appellant. The claimant does not meet the availability requirements of the law and benefits are denied as of March 31, 2012. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/kjw