

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMY BRITTON

Claimant

APPEAL NO. 08A-UI-03436-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BECK OIL CO OF ILLINOIS

Employer

**OC: 03/09/08 R: 04
Claimant: Respondent (2)**

Section 96.4-3 – Able and Available for Work

Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Beck Oil Company of Illinois (employer) appealed an unemployment insurance decision dated April 3, 2008, reference 01, which held that Amy Britton (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 April 21, 2008. The claimant participated in the hearing. The employer participated through Becky Brennan, Manager. Employer's Exhibit One was 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 cashier on March 21, 2005 and was promoted to an assistant manager. She is pregnant and her treating physician placed her on work restrictions as of January 21, 2008. The claimant implied that the restrictions would only be for her first trimester so the employer accommodated the claimant thinking it was only for a few weeks. However, the claimant's treating physician gave her additional restrictions on March 7, 2008 and she provided those to the employer on March 11, 2008. The additional restrictions included no lifting, vacuuming, mopping and climbing. The claimant was also prohibited from being near toxic fumes. The employer realized the restrictions were going to last for the entire pregnancy and the claimant's work restrictions could not be modified except for Sundays, since the claimant could complete paperwork on those days. The employer informed the claimant her job duties could not be modified full-time and the claimant went back to her treating physician and had her restrictions reduced. The employer questions why the claimant's work restrictions changed when her medical condition did not. The employer is requesting a full-release before the claimant is returned to her full-time work duties.

The claimant filed a claim for unemployment insurance benefits effective March 9, 2008 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 and the evidence confirms she is not.

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 24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

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). The claimant is currently on work restrictions due to a non-work-related medical condition. She is unable to carry out the essential functions of her position and the employer is unable to accommodate her medical restrictions. The claimant does not meet the availability requirements of the law as of March 9, 2008 and benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated April 3, 2008, reference 01, is reversed. The claimant does not meet the availability requirements of the law and benefits are denied as of March 9, 2008. The claimant is overpaid benefits in the amount of \$1,119.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css