

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**OLIVER BURNS**  
Claimant

**APPEAL NO. 07A-UI-02651-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LABOR READY MIDWEST INC**  
Employer

**OC: 01/21/07 R: 03**  
**Claimant: Respondent (4)**

Iowa Code § 96.4(3) - Able and Available

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the February 28, 2007, reference 04, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on April 2, 2007. Claimant responded to the hearing notice instructions but was not available when the hearing was called and did not participate. Employer participated through Dixie Derby.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant notified employer he was unable to work for the day on January 16, 2007, because his son was in the hospital. He then worked as a temporary banquet server at the Marriott on January 18 and 19, 2007. Employer put out a broadcast message to all employees on January 24 for work at the Marriott, and on January 22 at Liberty Tax for the week. Claimant did not respond to those but did report wages for the week ending January 27, 2007 in the amount of \$35.00 and worked when the employer next offered work on January 27, 2007 at the Marriott.

The claimant has received unemployment benefits since filing a claim with an effective date of January 21, 2007.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work except during the one week ending January 27, 2007.

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(2) 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Since claimant worked one day on January 27 but was not available for work when called on January 22 and 24, 2007, the majority of that workweek, he is not considered available for work that one week. Otherwise, claimant was able to work and available for work effective January 28, 2007.

The administrative law judge further concludes claimant has been overpaid benefits.

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 was not considered available for work the one week ending January 27, 2007, benefits in the amount of \$175.00 were paid for that week to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The February 28, 2007, reference 04, decision is modified in favor of the appellant. The claimant is able to work and available for work effective January 28, 2007 but was not available for work the majority of the week ending January 27, 2007. Benefits are withheld for the week ending January 27, 2007. The claimant is overpaid benefits in the amount of \$175.00.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/kjw