

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NICOLE HELM**  
Claimant

**APPEAL NO: 13A-UI-09982-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PILOT TRAVEL CENTERS LLC**  
Employer

**OC: 07/21/13**  
**Claimant: Respondent (2)**

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

**STATEMENT OF THE CASE:**

Pilot Travel Centers, LLC (employer) appealed an unemployment insurance decision dated August 21, 2013, reference 01, which held that Nicole Helm (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 October 10, 2013. The claimant participated in the hearing. The employer participated through Grant Ruggles and Jill Foster.

**ISSUE:**

The issue is whether the claimant is disqualified for being unavailable or unable 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 by Pilot Travel Centers as a full-time cashier on July 1, 2010 and continues to be employed in that same capacity. On May 24, 2013, she requested time off for vacation from July 11, 2013 through July 22, 2013. The employer paid the claimant 40 hours of vacation pay for the pay period July 11, 2013 through July 17, 2013; 32 hours of vacation and two hours of wages for the pay period July 18, 2013 through July 24, 2013; and 38.05 hours in wages for the pay period July 25, 2013 through July 31, 2013.

The claimant filed a claim for unemployment insurance benefits effective July 21, 2013 and has received benefits after the separation from employment in the amount of \$300.00.

**REASONING AND CONCLUSIONS OF LAW:**

The issue to be determined is whether the claimant is able and available for work. For the reasons that follow, the administrative law judge concludes the claimant does not meet the availability requirements of the law.

871 IAC 24.23(4), (23) provides:

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

(4) If the means of transportation by an individual was lost from the individual's residence to the area of the individual's usual employment, the individual will be deemed not to have met the availability requirements of the law. However, an individual shall not be disqualified for restricting employability to the area of usual employment. (See subrule 24.24(7).

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

and include subsection 23 from ref 149

The claimant was off work from her full-time job taking vacation and she said when she returned she was not on the schedule. However, she was paid vacation pay and wages for the time she filed for unemployment insurance benefits. Benefits are therefore denied.

Because the claimant has been deemed ineligible for benefits, any benefits she has received could constitute an overpayment. The unemployment insurance law requires benefits be recovered from a claimant who receives benefits from an initial decision and is later denied benefits from an appeal decision, even though the claimant acted in good faith and was not otherwise at fault.

**DECISION:**

The unemployment insurance decision dated August 21, 2013, reference 01, is reversed. The claimant is not able and available to work because she works full-time for the employer. Benefits are denied as of July 27, 2013 and the claimant is overpaid benefits in the amount of \$300.00.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs