

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BREANNA K REEVES
Claimant

APPEAL NO: 08A-UI-09250-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FIVE STAR QUALITY CARE INC
Employer

OC: 07/20/08 R: 03
Claimant: Respondent (4)

Section 96.4-3 – Able to and Available for Work
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Five Star Quality Care, Inc. (employer) appealed a representative's October 3, 2008 decision (reference 01) that concluded Breanna K. Reeves (claimant) was eligible to receive benefits as of July 20, 2008, because the employer placed her on a temporary layoff from work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 27, 2008. The claimant participated in the hearing. Bonny Decker, a human resource representative, appeared on the employer's behalf. 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.

ISSUES:

Is the claimant able to and available for work as of July 20, 2008?

Is the claimant working the same hours as she has always worked for the employer?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on April 6, 2007. The claimant worked full-time in the housekeeping and laundry departments. On June 13, 2008, the claimant requested and received Family Medical Leave (FMLA) as a result of her pregnancy. The claimant was off work for medical reasons a short time in June. The claimant's estimated delivery date was August 1, 2008.

On July 18, the employer eliminated a job position because of a low census. The employer eliminated one position and required the claimant to start her maternity or FMLA early. The claimant planned to work until her child was born. The claimant understood that after her child was born, the employer would again schedule her to work.

The claimant's baby was born August 1. On October 2, the claimant's physician released her to return to work. The claimant contacted the employer and asked to return to work. The employer had the claimant return to work on October 6, 2008.

The claimant established a claim for benefits during the week of July 20, 2008. She filed claims for the weeks ending July 26 through September 27, 2008. The claimant received her maximum weekly benefit amount of \$194.00 for every week with the exception of August 23, 2008. The week ending August 23, the claimant reported she had received vacation pay that exceeded her weekly benefit amount.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for benefits, she must be able to and available for work. Iowa Code section 96.4-3. The facts establish the employer required the claimant to go on maternity leave early because the workload was low and the employer did not have enough work for everyone. The claimant had planned to work until her child was born. Since the employer required the claimant to start her maternity leave early when the claimant was still able and available for work, the claimant is eligible to receive benefits for the weeks ending July 26 and August 2, 2008.

After the claimant's child was born, her physician did not release her to return to work until October 2. From August 3 to October 4, the claimant was on an approved leave of absence, FMLA for maternity leave. A negotiated leave of absence with the consent of both parties is deemed a period of voluntary unemployment and a claimant is not eligible for benefits during a leave of absence. 871 IAC 24.22(2) j.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code section 96.3-7.

From August 3 through October 4, 2008, the claimant was on an approved leave of absence and is not legally entitled to receive benefits. The claimant filed claims for the week ending August 9 through September 27. She received a total of \$1,358.00 in benefits for these weeks. The claimant has been overpaid and must repay \$1,358.00 in benefits she received for the weeks ending August 9 through September 27, 2008.

The claimant has not filed any claims since the week ending September 27, 2008. If the claimant reopens her claims, the reasons for October 10 employment separation may at that time be addressed.

DECISION:

The representative's October 3, 2008 decision (reference 01) is modified in the employer's favor. The employer required the claimant to go on a leave of absence before the claimant planned to do. Therefore, the employer effectively temporarily placed the claimant on a layoff for the weeks ending July 26 and August 2. The claimant is eligible to receive benefits for these weeks. From August 3 through October 4, the claimant was on a leave of absence that both

she and the employer agreed upon. As a result, the claimant is not eligible to receive benefits for the weeks ending August 9 through October 4, 2008. This means the claimant is not legally entitled to receive benefits for the weeks ending August 9 through September 27, 2008. She has been overpaid and must repay \$1,358.00 in benefits she received for these weeks.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs