

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SYLVIA RAMIREZ**

Claimant

**APPEAL NO. 10A-UI-07942-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WEBSTER CITY CUSTOM MEATS INC**

Employer

**OC: 05/02/10**

**Claimant: Respondent (2-R)**

Section 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The employer, Webster City Custom Meats, filed an appeal from a decision dated May 27, 2010, reference 01. The decision allowed benefits to the claimant, Sylvia Ramirez. After due notice was issued a hearing was held by telephone conference call on July 19, 2010. The claimant participated on her own behalf. The employer participated by Vice President Connie Ingraham and Production Manager David Bergeson.

**ISSUE:**

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

**FINDINGS OF FACT:**

Sylvia Ramirez was employed by Webster City Customer Meats beginning August 21, 2010 as a full-time lead worker. In January 2010 notices were posted on two bulletin boards informing employees if work was done in their area, and they wanted more work, to talk to their direct supervisor or Production Manager David Bergeson.

Ms. Ramirez filed a claim for unemployment benefits with an effective date of May 2, 2010, because work was somewhat slow in her area. She worked a few hours on the bacon line but did not consult Mr. Bergeson for more work after that job was over. The employer had sufficient work for all employees if they requested it, though not necessarily at their usual job. She worked 32.08 hours the week ending May 8, 2010, and 31.06 hours the week ending May 15, 2010.

Sylvia Ramirez has received unemployment benefits since filing a claim with an effective date of May 2, 2010.

## REASONING AND CONCLUSIONS OF LAW:

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 24.23(23) provides:

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

(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.

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 was working sufficient hours during each of the weeks of her claim that she was effectively removed from the labor market. In addition, she had the option to work on Tuesdays but it was her choice not to do so. Under these conditions she is not considered able and available for work and is ineligible for unemployment benefits as she did not work the full number of hours the employer had available for her.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

**DECISION:**

The representative's decision of May 27, 2010, reference 01, is reversed. Sylvia Ramirez is not eligible for benefits as she was not able and available for work. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs