

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEREMY G ANGELL
Claimant

APPEAL NO. 07A-UI-06833-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RM ENTERPRISES
Employer

OC: 07/09/06 R: 02
Claimant: Respondent (2)

Iowa Code § 96.4(3) - Able and Available
Iowa Code § 96.3(7) - Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 2, 2007, reference 03, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on July 30, 2007. Claimant did not participate. Employer participated through Rhonda Coborn.

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 has been employed since June 24, 2006. There was no work available on June 11 and 12, 2007. He reported for work on June 13 and 14 but volunteered to go home without working. He would have been able to work had he elected not to volunteer to go home. He worked Friday, June 15 and was paid for eight hours of work at \$8.25 per hour for a gross amount of \$66.00. These wages were not reported when he filed a claim for the week ending June 16, 2007.

The claimant has received unemployment benefits since filing an additional claim during the week of June 10, 2007 with on an original claim with an effective date of July 9, 2006.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work.

Iowa Code § 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.

871 IAC 24.23(16) provides:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

Since claimant either worked or opted not to work voluntarily for three of five workdays during the week ending June 16, 2007, he is not considered to have been available for work during the majority of the workweek. Accordingly, benefits are denied.

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

Iowa Code § 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 available for work during the week ending June 16, 2007, 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 July 2, 2007, reference 03, decision is reversed. The claimant is not able to work and available for work the one week ending June 16, 2007. Benefits are denied. The claimant is overpaid benefits in the amount of \$131.00.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css