

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TERESA H TAYLOR**  
Claimant

**APPEAL NO. 11A-UI-07181-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AMERICAN HOME SHIELD CORP**  
Employer

**OC: 10/25/09**  
**Claimant: Appellant (1)**

Iowa Code section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

Teresa Taylor filed an appeal from the April 20, 2011, reference 08, decision that denied benefits for the five-week period ending November 28 2009. After due notice was issued, a hearing was held by telephone conference call on June 10, 2011. Ms. Taylor participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. The hearing in this matter was consolidated with the hearing in Appeal Numbers 11A-UI-05876-JTT and 11A-UI-05877-JTT. Exhibits D-1 through D-13 were received into evidence.

**ISSUE:**

Whether Ms. Taylor was able to work and available for work during the five-week period that ended November 28, 2009.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Teresa Taylor established a claim for unemployment insurance benefits that was effective October 25, 2009 and received benefits. The benefits Ms. Taylor received included \$1,740.00 in benefits for the five-week period between October 25, 2009 and November 28, 2009. On December 3, 2009, Iowa Workforce Development mailed a copy of the December 3, 2009, reference 01, decision to Ms. Taylor's last-known address of record. Ms. Taylor received the decision in a timely manner, prior to the deadline for appeal. The decision denied benefits based on an Agency conclusion that Ms. Taylor had voluntarily quit employment due to a non-work-related medical issue. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by December 13, 2009. Ms. Taylor did not file an appeal in response to receiving the reference 01 decision.

On December 8, 2009, a Workforce Development representative entered a reference 02 decision that allowed benefits effective November 2, 2009, provided Ms. Taylor met all other eligibility requirements. The decision was based on a conclusion that Ms. Taylor was able and available for work. This was a separate and distinct issue from whether Ms. Taylor had separated from the employment for a reason that disqualified her for benefits or whether she

had requalified for benefits by fulfilling the terms of the December 3, 2009, reference 01 decision regarding the separation.

As part of the proceedings leading to entry of the December 8, 2009, reference 02 decision, Ms. Taylor provided a December 3, 2009 note from her health care provider indicating that she was released to return to the workforce. Ms. Taylor had not provided such documentation to Workforce Development prior to that time. Ms. Taylor had never returned to the employer to offer her services after recovering from the condition that took her off work.

The December 8, 2009, reference 02 decision was later nullified by the June 28, 2010, reference 03 decision because the reference 02 had been entered without notice to the employer and without opportunity for the employer to be heard.

On August 9, 2010, a Workforce Development representative entered a reference 04 decision that allowed benefits effective October 25, 2009, provided Ms. Taylor met all other eligibility requirements. The decision was based on a conclusion that Ms. Taylor was able and available for work. This was a separate and distinct issue from whether Ms. Taylor had separated from the employment for a reason that disqualified her for benefits or whether she had requalified for benefits by fulfilling the terms of the December 3, 2009, reference 01 decision regarding the separation. The reference 04 decision was entered after the employer was given an opportunity to participate and after the employer indicated, through Talx, that it was not contesting the claim for benefits. In connection with the proceedings leading to entry of the August 9, 2010, reference 04 decision, Ms. Taylor resubmitted the December 3, 2009 letter from her health care provider indicating that she was released to the workforce. Ms. Taylor has still not provided documentation to indicate that she was released to work prior to December 3, 2009.

The August 9, 2010, reference 04 decision was later nullified by the April 19, 2011, reference 07 decision, based on an Agency conclusion that the decision was entered in error. The reference 07 decision carried an April 29, 2011 deadline for appeal. Ms. Taylor did not appeal the reference 07 decision.

On October 27, 2010, a Workforce Development representative entered a reference 05 decision that allowed benefits, provided Ms. Taylor was otherwise eligible, based on a conclusion that she had separated from employer Accu Steel, Inc., on September 30, 2010, for a non-disqualifying reason.

On December 7, 2010, a Workforce Development representative entered a reference 06 decision that allowed benefits, provided Ms. Taylor was otherwise eligible. The decision further stated that a decision regarding Ms. Taylor's June 3, 2009 separation from American Home Shield Corporation "was made on a prior claim and that decision remains in effect." This language was erroneous, given that the prior decision in question, the December 3, 2009, reference 01 decision, had *denied* benefits.

On April 20, 2011, a Workforce Development representative entered a reference 08 decision that allowed benefits effective November 29, 2009, provided Ms. Taylor was otherwise eligible, but denied, in the Explanation of Decision, benefits for the period of October 25, 2009 through November 28, 2009. The decision referenced that Ms. Taylor had not been released from the doctor and that she was not able and available for work during the period for which benefits were denied. The reference 08 decision was based on the conclusion that Ms. Taylor was able and available for work effective November 29, 2009. The decision carried an April 30, 2011 deadline for appeal. Ms. Taylor received the decision in a timely manner, prior to the deadline for appeal.

On April 25, 2011, a Workforce Development representative entered a reference 09 decision that Ms. Taylor was overpaid \$1,740.00 for the five weeks ending November 28, 2009. The decision indicated that the overpayment decision was "due to the decision dated 12-03-09 on an able and available issue with American Home Shield Corp." This language was erroneous on two counts. First, the December 3, 2009, reference 01 decision had not addressed whether Ms. Taylor was able and available for work, but had instead addressed whether she had separated from the employer for a disqualifying reason. Second, it was the April 20, 2011, reference 08 decision, regarding Ms. Taylor's ability to work and availability for work, that had prompted the overpayment decision. The reference 08 decision had indicated on its face: "A determination of overpayment will be made." Ms. Taylor received the decision in a timely manner, prior to the May 5, 2011 deadline for appeal.

On April 29, 2011, Ms. Taylor mailed her appeal from the April 25, 2011, reference 09 overpayment decision. Ms. Taylor attached a copy of the overpayment decision. The mailed appeal was postmarked April 29, 2011. When the Appeals Section received the appeal letter on May 3, 2011, the Appeals Section, based on the language of the overpayment decision, treated the appeal as also an appeal from the December 3, 2009, reference 01 decision. Only later did it become clear that the appeal should also be treated as an appeal from the April 20, 2011, reference 08 decision and it was added to the appeal.

#### **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 24.22(1)a, (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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical

ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

(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.

The weight of the evidence in the record establishes that Ms. Taylor was under the care of a health care provider and had not been released to return to the workforce until December 3, 2009. Accordingly, Ms. Taylor was not eligible for benefits for the five-week period ending November 28, 2009.

**DECISION:**

The Agency representative's April 20, 2011, reference 08, decision is affirmed. The claimant was not able and available for work for the five-week period ending November 28, 2009 and was not eligible for benefits for that period.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs