

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

ALICIA R FORRY  
PO BOX 413  
ALLISON IA 50602-0413

KAY & L DRAPERIES INC  
602 INDUSTRIAL ST  
WAVERLY IA 50677

Appeal Number: 06A-UI-07359-CT  
OC: 07/02/06 R: 03  
Claimant: Respondent (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.4(3) – Able and Available  
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Kay & L Draperies, Inc. filed an appeal from a representative's decision dated July 17, 2006, reference 02, which held that Alicia Forry satisfied the availability requirements of the law and was eligible to receive benefits effective July 2, 2006. After due notice was issued, a hearing was held by telephone on August 9, 2006. The employer participated by Jerry Thorson, General Manager, and Kimberly Fober, Workroom Manager. Ms. Forry offered a written statement, admitted as Exhibit A, in lieu of appearance.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Forry began working for Kay & L Draperies, Inc. on September 28, 2005 as a full-time laborer. On or about March 15, 2006, a notice was posted advising employees that the facility would be on shut-down from July 3 through July 7. On March 15, the employer also posted a notice that work would be available during the shut-down and that employees should sign up for work by June 23.

The work the employer had available during the shut-down consisted of cleaning various areas of the building, dusting light fixtures and furniture, washing windows, cleaning grassy areas, and pulling weeds. Those employees who elected to work would receive their regular wage and work the same hours as before the shut-down. Ms. Forry did not work during the shut-down because she was out of town. She returned to work as scheduled on July 10, 2006.

Ms. Forry filed a claim for job insurance benefits effective July 2, 2006. She received \$129.00 in job insurance benefits for the week ending July 8, 2006. The benefits were not paid directly to Ms. Forry but were used to offset against a prior overpayment of benefits.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Forry satisfied the availability requirements of the law during the week ending July 8, 2006. The availability requirements of Iowa Code section 96.4(3) are waived if an individual is on a short-term layoff, such as the shut-down in this case. However, the individual must remain available to the employer that laid her off. Ms. Forry had the choice whether to work during the week ending July 8. Had she chosen to work, the employer would have made work available for the entire period of the shut-down. Ms. Forry would not have suffered the loss of any pay or hours had she chosen to work.

The only issue remaining is whether the work the employer had available during the week ending July 8 was suitable work. The work the employer had available was not Ms. Forry's usual job as a laborer. The work available consisted primarily of cleaning. This, in and of itself, would not render the work unsuitable. Ms. Forry has not established that she could not perform the work the employer had available. She has failed to establish that the work available was unsuitable in any respect. Therefore, because she was not available to the employer during the week ending July 8, 2006, she is not entitled to job insurance benefits for the week. See 871 IAC 24.23(41).

Ms. Forry was credited with receipt of \$129.00 in job insurance benefits for the week ending July 8, 2006, with this amount being applied to an outstanding overpayment. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

#### DECISION:

The representative's decision dated July 17, 2006, reference 02, is hereby reversed. Ms. Forry was on a short-term layoff during the week ending July 8, 2006 but was not available to the employer that laid her off. Benefits are denied for the week ending July 8, 2006. Ms. Forry has been overpaid \$129.00 in job insurance benefits.

cfc/pjs