

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

REBECCA A GILMORE
Claimant

APPEAL NO. 07A-UI-00079-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 03/12/06 R: 03
Claimant: Appellant (3)**

Section 96.4(3) – Able and Available
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The claimant, Rebecca Gilmore, filed an appeal from a decision dated December 27, 2006, reference 02. The decision warned her to make two job contacts per week to maintain eligibility for unemployment benefits. After due notice was issued a hearing was held by telephone conference call on February 6, 2007. The claimant participated on her own behalf.

ISSUE:

The issue is whether the claimant made the required job contacts and is able and available for work.

FINDINGS OF FACT:

Rebecca Gilmore filed an additional claim for benefits with an effective date of July 23, 2006. She filed weekly claims through December 23, 2006. During that week she reported \$178.00 in wages, received \$30.00 in unemployment benefits. She made zero job contacts because she had started a new job on Monday, December 18, 2006. She worked three days for her new employer and was sick for two days.

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(1) and (2) provide:

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

(1) An individual who is ill and presently not able to perform work due to illness.

(2) Where a claimant does not want to earn enough wages during the year to adversely affect receipt of federal old-age benefits (social security).

The claimant did not make the required job contacts for the week ending December 23, 2006, because she had obtained employment that week. However, she still filed a weekly claim although she was working three days and ill for two other days. This makes her not ineligible for benefits.

Iowa Code section 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.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of December 27, 2006, reference 02, is modified in favor of the respondent. Rebecca Gilmore was not able and available for work as she was either employed elsewhere or ill for the majority of the week ending December 23, 2006. She is overpaid in the amount of \$30.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css