

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GLORIA B BARAJAS
Claimant

APPEAL NO: 10A-UI-02223-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

SARA LEE CORP
Employer

OC: 12/20/09
Claimant: Respondent (2-R)

Section 96.4-3 – Able and Available
871 IAC 24.23(16) – Not Working Available Hours
Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

The employer appealed a department decision dated January 29, 2010, reference 01, that held the claimant eligible for benefits beginning December 20, 2009. A telephone hearing was held on March 30, 2010. The claimant did not participate. Terry Vrieze, HR Generalist, participated for the employer. Employer Exhibits One through Four was received as evidence.

ISSUES:

Whether the claimant is able and available for work.

Whether the claimant is overpaid benefits.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witness, and having considered the evidence in the record, finds: The claimant began work for the employer on October 26, 1999. The claimant is a current employee working full time in the sanitation department at a pay rate of \$12.94 per hour. The claimant normally works Monday through Friday. The claimant requested and the employer granted 16 hours of unpaid leave for Monday and Tuesday, December 21 and 22. The plant was shut down and no work was available on Wednesday, December 23. The claimant received 16 hours of holiday pay in the amount of \$215.00 for December 24 and 25. The claimant filed a claim for the week ending December 26 and she reported earnings of \$198.00, and she received a benefit of \$304.00.

The claimant was not available when called for the hearing.

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(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.

The administrative law judge concludes that the claimant is not eligible for benefits the week ending December 26, as she was not able and available for work.

The claimant took leave without pay for two of the three days that were not holidays for the week. The claimant could have worked 16 hours and earned an additional \$215.00 for the week, and when added to her holiday pay of \$215.00, her total earnings of \$430.00 would have made her ineligible for any benefit.

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.

Since the claimant was paid a partial benefit for the week ending December 26, this overpayment issue is remanded to Claims for a determination.

DECISION:

The department decision dated January 29, 2010, reference 01, is reversed. The claimant is not eligible for benefits the week ending December 26, 2009. The overpayment issue is remanded.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css