

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM C OHLENDORF
Claimant

APPEAL NO. 11A-UI-02461-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALTER BARGE LINE INC
Employer

OC: 02/07/10
Claimant: Respondent (4-R)

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The employer, Alter Barge Line, filed an appeal from a decision dated February 28, 2011, reference 01. The decision allowed benefits to the claimant, William Ohlendorf. After due notice was issued a hearing was held by telephone conference call on March 15, 2011. The claimant participated on his own behalf. The employer participated by Human Resources Manager Mary Jekel.

ISSUE:

The issue is whether the claimant is eligible for unemployment benefits.

FINDINGS OF FACT:

William Ohlendorf is employed by Altar Barge Line as a full-time pilot. He works for 30 days and then has 30 days off. His last scheduled 30-day off period ran from January 11 through February 7, 2011.

The claimant had filed a previous claim for benefits with an effective date of February 7, 2010. In January 2011 he somehow learned that he would not be able to return to work February 8, 2011 because the barge was “tied up.” He contacted Iowa Workforce Development and the representative asked him what his last day of work had been and the claimant gave that information. However, it does not appear he informed the representative of the 30 days on/30 days off nature of his job and an additional claim was opened effective January 23, 2011. He received benefits for the week ending January 29, 2011.

Mr. Ohlendorf then filed a new claim effective February 6, 2011 at the beginning of the time period when he should have been returning to work. He filed for two weeks and then was able to return to work effective February 25, 2011.

REASONING AND CONCLUSIONS OF LAW:

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".

The claimant was not able and available for work for the one-week period ending January 29, 2011, because he was still on his regular, contractual 30-day time period off duty. He would not be eligible for benefits during that time. He would be eligible for benefits beginning February 6 through 19, 2011.

Iowa Code § 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.

The claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of February 28, 2011, reference 01, is modified in favor of the appellant. William Ohlendorf is not eligible for benefits for the one-week period ending January 29, 2011, but is eligible for the period February 6 through 19, 2011.

The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs