

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BARBARA A STATON**  
Claimant

**APPEAL NO. 11A-UI-00257-PT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**A TO Z SNACKS INC.**  
Employer

**OC: 11/28/10**  
**Claimant: Respondent (2-R)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated December 29, 2010, reference 01, which held claimant able and available for work. After due notice, a telephone conference hearing was scheduled for and held on February 21, 2011. Claimant participated personally. Employer participated by Craig Zebuhr, vice president.

**ISSUE:**

The issue in this matter is whether claimant is able and available for work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds: Claimant was hired to work as needed in the employer's warehouse and later to drive a truck for deliveries. She filed a claim effective November 28, 2010. Her base period consists solely of wages earned in this employment on this basis. She is currently working on the same basis—as needed.

She had surgery for a personal condition in September 2010 and was released with restrictions on November 28, 2010. The restrictions did not limit her availability to work in the warehouse.

**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".

The claimant is employed to the same extent she was during the base period of her claim in which she earned all of her wage credits. Therefore, she is not unemployed. See 871 IAC 24.22(2)i(3).

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.

The matter of whether claimant is overpaid is remanded for determination.

**DECISION:**

The decision of the representative dated December 29, 2010, reference 01 is reversed. Claimant is not eligible to receive unemployment insurance benefits, effective November 28, 2010, as she is still employed to the same extent as she was during the base period of her claim. The matter of whether she is overpaid is remanded.

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Ron Pohlman  
Administrative Law Judge

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Decision Dated and Mailed

rrp/kjw