

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

SHERRI LYONS
507 PRAIRIE ST
GUTHRIE CENTER IA 50115

GUTTERZ BOWL & LOUNGE LLC
2004 STATE ST
GUTHRIE CENTER IA 50115-1046

Appeal Number: 06A-UI-00674-BT
OC: 05/15/05 R: 01
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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4-3 - Able and Available for Work
Section 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Gutterz Bowl & Lounge (employer) appealed an unemployment insurance decision dated January 11, 2006, reference 03, which held that Sherri Lyons (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 20, 2006. The claimant participated in the hearing. The employer participated through owner Carmen Atkinson.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer offered the claimant a job on June 1, 2005 but the

claimant declined the offer because she was already working for the 44 Drive-In located in Panora, Iowa. The claimant started her employment with the 44 Drive-In on approximately May 6, 2005 and continues to work in that same capacity.

The claimant filed a claim for unemployment insurance benefits effective May 15, 2005 and has received benefits after the separation from employment in the amount of \$4,387.94.

The claimant did not report she earned any wages from the 44 Drive-In because she did not receive actual wages. The owners of 44 Drive-In sold a house to the claimant and her husband and the wages the claimant was earning each week were being applied to the claimant's debt with the employer.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant unreasonably rejected an offer of suitable work. An individual who refuses recall to suitable work is disqualified from receiving job insurance benefits. The claimant refused the employer's job offer because she was employed elsewhere.

871 IAC 24.24(4) provides:

(4) Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code section 96.4(3). Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work and not unemployed for failing to bump a fellow employee with less seniority. If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work or apply for work, such claimant shall not be disqualified for refusal since the claimant is not available for work. In such a case it is the availability of the claimant that is to be tested. Lack of transportation, illness or health conditions, illness in family, and child care problems are generally considered to be good cause for refusing work or refusing to apply for work. However, the claimant's availability would be the issue to be determined in these types of cases.

Since the claimant was not available for work, she is not disqualified as a result of the job refusal but is disqualified for her failure to meet the availability requirements of the law. Benefits are denied.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

The claimant was working while claiming benefits on her claim filed effective May 15, 2005 but did not report earnings. Consequently, this matter shall be remanded to Investigation and Recovery for further action.

DECISION:

The unemployment insurance decision dated January 11, 2006, reference 03, is reversed. The claimant does not meet the availability requirements of the law. Benefits are denied from week ending May 21, 2005 through week ending February 25, 2006. The claimant is overpaid benefits in the amount of \$4,387.94. This matter is remanded to Investigation and Recovery for further action.

sdb/s