

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STACY J GROCE**  
Claimant

**APPEAL NO. 06A-UI-09847-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CAMBRIDGE TEMPOSITIONS INC**  
Employer

**OC: 07-09-06 R: 04  
Claimant: Respondent (4)**

Iowa Code § 96.5(1)j – Voluntary Leaving – Temporary Employment  
Iowa Code § 96.3(7) - Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the September 27, 2006, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on October 23, 2006. Claimant participated. Employer participated through Victor Ochoa. The administrative law judge took judicial notice of the administrative record.

**ISSUE:**

The issue is whether claimant quit the employment without good cause attributable to the employer and if she is overpaid benefits.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed until July 7, 2006, when she was separated from the assignment due to its conclusion. Ochoa told her the employer would contact her if there was further work. Employer left phone messages and sent her a certified letter on August 24, 2006 about work availability, since it could not reach her by telephone. She did not pick up the letter and did not return calls because she claims she did not get either the letter, notice of the letter or telephone messages. She admitted she knew she should go in to employer's office but did not for various reasons (school classes, schedule conflicts, etc.).

Claimant has agreed to report to employer on October 24, 2006 for work, which employer says is available.

The claimant has received unemployment benefits since filing a claim with an effective date of July 9, 2006.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work.

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".

871 IAC 24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Claimant's assertions she received no communication from employer is not credible. Three phone messages and three attempts at delivery of a certified letter are statistically unlikely to have been missed or overlooked. Furthermore, claimant acknowledged she knew she should have reported back to employer for more work. Accordingly, benefits are denied as of the week ending date August 26, 2006 after the certified letter was sent on August 24, 2006 and through the week ending October 21, 2006. Since claimant did not see the letter or refuse an offer of work, she is not disqualified pursuant to Iowa Code § 96.5(3)a.

The administrative law judge further concludes claimant has been overpaid benefits.

Iowa Code § 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 was not available for work from August 26 through October 21, 2006, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The September 27, 2006, reference 01, decision is modified in favor of the appellant. The claimant is not able to work and available for work effective August 27, 2006 through October 21, 2006. Benefits are denied. The claimant is overpaid benefits for that period in the amount of \$792.00.

NOTE TO PARTIES: If claimant did not report to employer for a referral to work on October 24, 2006 as promised in the hearing, employer should report the issue to the local office. If employer does not provide employment to claimant sometime during the week ending October 28, 2006, claimant should file a weekly claim.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/kjw