

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBIN ZACH
Claimant

APPEAL NO. 07A-UI-07382-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEDONA STAFFING
Employer

**OC: 07/01/07 R: 03
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

L A Leasing, Inc. (employer) appealed an unemployment insurance decision dated July 26, 2007, reference 01, which held that Robin Zach (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 August 16, 2007. The claimant participated in the hearing. The employer participated through Colleen McGuinty, Unemployment Benefits Administrator and Account Managers Tom Appel and Dany Kruppe. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant is able and available to work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant began employment on October 3, 2006 and her last assignment started on January 26, 2007. She was scheduled to work on February 8, 9 and 10, 2007. She called the employer on February 8 to report she fell and could not work. The employer directed her to contact the client company but the claimant failed to do so. She was then a no-call/no-show the next two days. The claimant contacted the employer on February 13 but the client company had hired someone else to take her place since it had not heard from the claimant. The employer had no other work available at that time. The claimant next checked in on February 23, 2007 but the employer still did not have any work available. The employer offered the claimant work on March 22, 2007 but the claimant declined that offer due to lack of transportation. The employer offered the claimant work again at Nordstrum on June 25, 2007 and the claimant accepted the assignment which was scheduled to begin on June 26, 2007. However, she was a no-call/no-show because she had transportation problems and has not contacted the employer since.

The claimant filed a claim for unemployment insurance benefits effective July 1, 2007 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant is able and available for work. In order for an individual to be eligible to receive unemployment insurance benefits, the evidence in the record must establish that she is able to work, available for work, and earnestly and actively seeking work. See Iowa Code § 96.4(3) and 871 IAC 24.22.

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 24.23(4) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(4) If the means of transportation by an individual was lost from the individual's residence to the area of the individual's usual employment, the individual will be deemed not to have met the availability requirements of the law. However, an individual shall not be disqualified for restricting employability to the area of usual employment. (See subrule 24.24(7)).

The claimant has the burden of proof in establishing her ability and availability for work. Davoren v. Iowa Employment Security Commission, 277 N.W.2d 602 (Iowa 1979). The claimant's availability has varied since February 3, 2007 when she last worked for the employer. However, it is only necessary to determine her availability as of the time she filed a claim for unemployment insurance benefits. The claimant accepted work on June 25, 2007 and was scheduled to start work on June 26, 2007. She failed to report for that assignment because she had car problems. Consequently, the claimant is not able and available to work due to lack of transportation. Benefits are therefore denied.

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'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.

DECISION:

The unemployment insurance decision dated July 26, 2007, reference 01, is reversed. The claimant does not meet the availability requirements of the law and benefits are denied as of July 7, 2007. The claimant is overpaid benefits in the amount of \$858.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css