

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NINA HEAFEY**  
Claimant

**APPEAL NO. 08A-UI-06212-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PELLA CORPORATION**  
Employer

**OC: 05/25/08 R: 01**  
**Claimant: Respondent (2)**

Iowa Code § 96.4-3 - Able and Available for Work  
Iowa Code § 96.3-7 - Overpayment

**STATEMENT OF THE CASE:**

Pella Corporation (employer) appealed an unemployment insurance decision dated June 27, 2008, reference 01, which held that Nina Heafey (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 July 22, 2008. The claimant participated in the hearing. The employer participated through Bob Larson, Human Resources Manager. 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 having considered all of the evidence in the record, finds that: The claimant was employed as a full-time general laborer from November 15, 1999 through April 12, 2007. At that time, she alleged she sustained a work-related injury and was put on extreme work restrictions. The issue of whether the claimant's injury is work-related is being contested by the employer. The claimant is not allowed to lift more than three pounds and cannot lift her arms above shoulder height. The employer is a manufacturing company and does not regularly have work within those restrictions but offers work to her when available. The claimant worked periodically through May 11, 2008 but has not worked since that date, although she is still employed with the employer. The claimant testified she is available to work but cannot state whether she is able to work due to chronic pain. She did admit she is unable to work for any other employer but claims the employer has not offered her work so she does not know whether she could do the work. The claimant has an attorney representing her in her workers' compensation case and a decision was issued this year that found the claimant totally and permanently disabled. The employer is appealing that decision but questions how the claimant can be able and available to work when she is also totally and permanently disabled.

The claimant filed a claim for unemployment insurance benefits effective May 25, 2008 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. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but that which is engaged in by others as a means of livelihood. 871 IAC 24.22(1).

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(1) provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

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 does not know whether she is able to work and therefore has not established she has the ability to work. Additionally, a decision issued this year by a deputy workers' compensation commissioner found the claimant is permanently and totally disabled. The claimant therefore does not meet the availability requirements of the law and is not entitled to unemployment insurance 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'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 June 27, 2008, reference 01, is reversed. The claimant does not meet the availability requirements of the law and benefits are denied. The claimant is overpaid benefits in the amount of \$2,416.00.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/kjw