

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ELIZABETH Y BUCHANAN**

Claimant

**APPEAL NO. 12A-UI-13746-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TEAM STAFFING SOLUTIONS INC**

Employer

**OC: 10/07/12**

**Claimant: Respondent (4-R)**

Section 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The employer, Team Staffing, filed an appeal from a decision dated November 9, 2012, reference 01. The decision allowed benefits to the claimant, Elizabeth Buchanan. After due notice was issued a hearing was held by telephone conference call on January 7, 2013. The claimant participated on her own behalf. The employer participated by Claims Administrator Sarah Fiedler.

**ISSUE:**

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

**FINDINGS OF FACT:**

Elizabeth Buchanan began employment with Team Staffing January 11, 2012. She had one assignment at Roquette until September 28, 2012, when the work was completed. The claimant did not make actual contact with the employer to request a new assignment until October 31, 2012, at which time she met with Rhonda, the branch manager, and updated her resume.

Elizabeth Buchanan has received unemployment benefits since filing a claim with an effective date of October 7, 2012.

**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 did not make the appropriate contact with the temporary agency until October 31, 2012, to request a new assignment as required. She was reinstated at that time and was once more eligible for reassignment.

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 claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

**DECISION:**

The representative's decision of November 9, 2012, reference 01, is modified in favor of the appellant. Elizabeth Buchanan is not eligible for benefits from October 7 through 27, 2012, because she had not made herself available to the temporary agency as required. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

---

Bonny G. Hendricksmeier  
Administrative Law Judge

---

Decision Dated and Mailed

bgh/pjs