

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRENDA L SCHROEDER
Claimant

APPEAL NO. 08A-UI-03419-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 12/16/07 R: 01
Claimant: Appellant (3)**

Section 96.4(3) – Adequate Work Search
Section 96.4(3) – Able and Available
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 25, 2008, reference 02, decision. The decision warned that the claimant may be disqualified for future weeks in which benefits are claimed and fewer than two in-person job contacts are made but did not deny benefits for that week. After due notice was issued, a hearing was held on April 22, 2008. The claimant did participate in the hearing.

ISSUE:

The issue is whether the claimant made an adequate work search.

FINDINGS OF FACT:

The claimant filed a claim for unemployment insurance benefits with an effective date of December 16, 2007. During the week ending March 22, 2008, the claimant failed to conduct at least two in-person work searches. The claimant has been working for Frank Audino Construction since January 28, 2008, and has worked at least 20 hours per week since that date. She continued to file for unemployment benefits but has not done work searches on a weekly basis.

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".

871 IAC 24.23(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

The claimant did not do any work searches for the week in questions because she is currently working for a new employer. She has worked at least 20 hours per week ever since the week ending February 2, 2008. Under the provisions of the above Administrative Code section, this makes her unavailable for work.

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.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of March 25, 2008, reference 02, is modified adverse to the appellant. The decision warning the claimant to conduct at least two in-person work searches during each week benefits are claimed was appropriate.

In addition, she has not been able and available for work due to accepting other employment and working consistently for the new employer. She is overpaid in the amount of \$681.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw