

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BOBBIE J PALMER
Claimant

APPEAL NO. 13A-UI-07832-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 06/02/13
Claimant: Respondent (4-R)

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The employer, Care Initiatives, filed an appeal from a decision dated June 24, 2013, reference 01. The decision allowed benefits to the claimant, Bobbie Palmer. After due notice was issued a hearing was held by telephone conference call on August 12, 2013. The claimant did not provide a telephone number where she could be contacted and did not participate. The employer participated by Administrator Casey Stephens and was represented by TALX in the person of Alyce Smolsky.

ISSUE:

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

FINDINGS OF FACT:

Bobbie Palmer began working for Care Initiatives on June 15, 2009, as a full-time laundry aide. Her full-time hours were 30 per week, with a two-week pay period.

The claimant's hours were reduced beginning June 1, 2013, due to a low census. She took some days of vacation in the two-week period of June 21 through 29, 2013. The employer specified the number of hours per week she worked, and she did report wages but the amount she reported does not appear to match the hours she worked those weeks. The final week of her claim she worked 29.90 hours, but reported only \$102.00 in wages, which, at an hourly wage of \$8.16, is not correct.

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 worked all hours available to her except for the two-week period from June 16 through 29, 2013, when she took vacation. In addition, the week ending July 27, 2013, she worked over 29 hours of her regularly scheduled 30 hours per week.

Ms. Palmer is not eligible for benefits from June 16 through 29, 2013, and the one-week period ending July 27, 2013.

The claimant does not appear to have correctly reported her wages during some of her weekly claims. This should be remanded to Investigation and Recovery for examination.

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 June 24, 2013, reference 01, is modified in favor of the appellant. Bobbie Palmer is not eligible for benefits from June 21 through 29, 2013, and from July 21 through 27, 2013.

The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

The issue of the correct amount reported in wages for the weekly claim is remanded to Investigation and Recovery.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs