

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KIM R Warburton**

Claimant

**APPEAL NO. 08A-UI-01556-H2T**

**ADMINISTRATIVE LAW JUDGE**

**AMENDED DECISION**

**AMAZE BUSINESS SOLUTIONS**

Employer

**OC: 01-06-08 R: 03**  
**Claimant: Respondent (2)**

Section 96.4-3 - Able and Available  
Section 96.3(7) - Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the February 7, 2008, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on March 17, 2008. The claimant did not participate. The employer did participate through Jackie Johansen, Owner. Employer's Exhibit One was received.

**ISSUES:**

Is the claimant able to and available for work?

Has the claimant been overpaid any unemployment insurance benefits?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a graphic designer part time beginning August 15, 2006 through date of hearing.

The claimant would be e-mailed her projects and when they were completed she would e-mail or post to a FTP site. Then wait to be assigned another project. If the claimant wanted another project she had only to ask for an additional work. Employer's Exhibit One sets out the projects assigned to the claimant from December 18, 2007 and her availability for work through February 14. The claimant did not complete any of the projects assigned to her, nor did she always report for work. Continued work has been available for the claimant but she does not complete the work or make herself available for work. On February 15 the claimant was sent further project instructions for the project assigned to her on February 14, 2008. The employer did not hear back from the claimant nor did they receive the completed work. On February 20 the employer had to assign the project to another employee so that it would be completed. The claimant wrote an e-mail to the employer indicating that she had not been able to work due to illness, personal business and the demands of another job she was currently working. The claimant then indicated she would not be available for work during normal business hours. Ms. Johansen sent the claimant an e-mail on March 3 indicating that there were projects

available for the claimant to work on if she so desired. The employer has not heard back from the claimant. The claimant has not completed any project since December, despite being assigned numerous projects nor has she responded to the employer's e-mail of March 3.

Claimant has received unemployment benefits since filing a claim with an effective date of January 6, 2008.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work effective January 6, 2008.

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(16) provides:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

While the claimant has been assigned work, she has not completed any projects. The claimant is simply not making herself available for work nor is she completing the assignments given to her. Under these circumstances, the administrative law judge determines the claimant is not able to and available for work effective January 6, 2008. Accordingly, benefits are denied.

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.

Because claimant's separation was disqualifying, benefits were paid to which claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The February 7, 2008, reference 01, decision is reversed. The claimant is not able to work and available for work effective January 6, 2008. Benefits are denied. Claimant is overpaid benefits in the amount of \$561.00.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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