

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIFFANY N YOUNG
Claimant

APPEAL NO: 06A-UI-08906-SWT

**ADMINISTRATIVE LAW JUDGE
AMENDED DECISION**

EAGLE OTTAWA LLC
Employer

**OC: 12/25/05 R: 03
Claimant: Respondent (4-R)**

Section 96.4-3 - Able to and Available for Work
Section 96.3-7 - Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated August 31, 2006, reference 02, that concluded the claimant was eligible for benefits effective December 25, 2005, because she was on a short-term layoff. A telephone hearing was held on September 21, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing. Tracy Keller participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant able to and available for work?
Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked for the employer from August 2, 2004, to December 22, 2005, when she was temporarily laid off during a holiday shut down. The claimant filed a new claim for unemployment insurance benefits with an effective date of December 25, 2005.

The claimant returned to work full time on January 3, 2006. She worked until January 22 when she was off work due to medical reasons from January 23 through February 18, 2006, and received short-term disability pay during this period. The claimant returned to work for the employer on February 21, 2006, and continued working through September 1, 2006.

During the time the claimant was working and during the time that she was off work receiving short-term disability, the claimant filed for and received unemployment insurance benefits. She filed through June 17, 2006. She did not report her wages during the time she was working full time and did not report her short-term disability payments. She filed for and received a total of \$8,376.00 in benefits from the January 1, 2006, to June 17, 2006.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code section 96.4-3. The rules provide that individuals are unavailable for work if they are working to such a degree that they are removed from the labor market. 871 IAC 24.23(23). This is clearly the case as the claimant was working full time but not reporting her wages for the period from January 3 to January 22 and from February 19 to June 17. Individuals are also ineligible for benefits if they are unable to work due to sickness or injury. Iowa Code section 96.4-3. The claimant was unable to work from January 23 through February 18, 2006. This means the claimant was ineligible to receive benefits from January 1, 2006, to June 17, 2006.

The next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

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.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits and was overpaid \$8,376.00 in benefits.

DECISION:

The unemployment insurance decision dated August 31, 2006, reference 02, is modified in favor of the employer. The claimant is ineligible for unemployment insurance benefits from January 1, 2006, to June 17, 2006. She was overpaid \$8,376.00 in benefits for those weeks, which she must repay. The issue of whether the claimant fraudulently received benefits is remained to the Agency for an investigation and determination. However, \$1,396.00 of this amount has been set up on a separate issue.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs/pjs