

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GLORIA J BARDNEY
Claimant

APPEAL NO. 12A-UI-08963-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**LA LEASING
SEDONA STAFFING**
Employer

**OC: 04/22/12
Claimant: Respondent (2-R)**

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The employer, Sedona, filed an appeal from a decision dated July 17, 2012, reference 05. The decision allowed benefits to the claimant, Gloria Bardney. After due notice was issued a hearing was held by telephone conference call on August 20, 2012. The claimant participated on her own behalf. The employer participated by Unemployment Benefits Administrator Colleen McGuinty and Account Manager Dennis Leeser.

ISSUE:

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

FINDINGS OF FACT:

Gloria Bardney filed a claim for unemployment benefits with an effective date of April 22, 2012 with an additional claim effective June 17, 2012. Her last day of work for Sedona was May 9, 2012 and after that she called to Account Manager Dennis Leeser saying her hands and then her back hurt and she would not be at work. Mr. Leeser told her to contact him.

Ms. Bardney was apparently seen by a doctor who released her to return to work effective June 14, 2012. The note releasing her was not written until July 13, 2012. The claimant did not contact Mr. Leeser because she felt she was not able to return to work in spite of the doctor's release. She maintained the doctor had told her to return to work "at her discretion" and if she did not feel she could work, then she should not do so. There is no documentation to that effect provided by the claimant.

Gloria Bardney has received unemployment benefits since filing a claim with an effective date of June 17, 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".

In spite of the doctor's note releasing her without restrictions effective June 14, 2012, the claimant has maintained she is not able to work because of problems with her hands and back. There is no proof from the doctors he released her only "at her discretion" but it is evident she had not made herself available to Sedona. There is no indication precisely what restrictions she may have and what type of work she is able and qualified to do with any such restrictions.

The administrative law judge must conclude the claimant has not established she is able and available for work and is therefore ineligible for benefits.

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 July 17, 2012, reference 05, is reversed. The claimant is not eligible for unemployment benefits until such time as she establishes what restrictions she may have, verified by a physician or other healthcare provider, and what she is qualified to do within those restrictions. 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