

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

REBECA ALVARADO
Claimant

APPEAL NO. 12A-UI-00749-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SCHENKER LOGISTICS INC
Employer

OC: 01/23/11
Claimant: Respondent (4-R)

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The employer, Schenker Logistics, filed an appeal from a decision dated January 9, 2012, reference 03. The decision allowed benefits to the claimant, Rebeca Alvarado. After due notice was issued a hearing was held by telephone conference call on February 20, 2012. The claimant participated on her own behalf. The employer participated by Human Resources Manager Nicki Brick.

ISSUE:

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

FINDINGS OF FACT:

Rebeca Alvarado began employment with Schenker Logistics on March 9, 2009, as a full-time case pick operator. She filed a claim for unemployment benefits with an effective date of January 23, 2011, and additional claim effective November 27, 2011. She received unemployment benefits on the additional claim for three weeks.

The first week ending December 3, 2011, she worked 24 regular hours, 4.2 overtime hours and had 12 hours of excused absence. The next week she received unemployment benefits was the week ending January 7, 2012, when she worked 28.65 regular hours and received 12 hours of holiday pay. The third week ending January 14, 2012, she did not work the full 40 hours because there was not enough work.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 is not eligible for benefits for the weeks ending December 3, 2011, because she could have worked the full 40 hours except she was absent for one day. She is not eligible for benefits the week ending January 7, 2012, because she worked 28.65 hours and received pay for 12 hours of holiday, again constituting a full 40 hours.

She is eligible for benefits the week ending January 14, 2012, because a full week of work was not available.

Iowa Code § 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 January 9, 2012, reference 03, is modified in favor of the appellant. Rebeca Alvarado is not eligible for benefits the weeks ending December 3, 2011 and January 7, 2012. 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