

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MERCEDES LOPEZ

Claimant

APPEAL NO. 10A-UI-08603-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEBSTER CITY CUSTOM MEATS INC

Employer

OC: 05/02/10

Claimant: Respondent (2-R)

Section 96.4-3 - Able to and Available for Work

Section 96.3-7 - Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated June 7, 2010, reference 01, that concluded the claimant was eligible for benefits and the employer was chargeable for benefits paid because she was on a short-term layoff. A telephone hearing was held on August 3, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing with the assistance of an interpreter, Ike Rocha. Connie Ingraham participated in the hearing on behalf of the employer with a witness, David Bergeson.

ISSUES:

Was the claimant able to and available for work?

Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked full-time for the employer on the bacon packaging line starting September 25, 2007.

During the weeks ending May 8 and 15, 2010, the bacon packaging line was not running on May 4 and 11. The employer, however, had announced to employees, including the claimant, that extra hours were available for employees who wanted to work. Employees were told to contact their supervisor first, and if the supervisor did not have additional work, to contact the production manager, who would make sure the employees had full-time hours for the week. The claimant never contacted her supervisor or the production manager about extra hours. If she had, she would have maintained her full-time hours for the week.

The claimant filed a new claim for unemployment insurance benefits with an effective date of May 2, 2010. Her weekly benefit amount was determined to be \$369.00. She worked 30.24 hours during the week ending May 8, reported \$330.00 in wages, and was paid \$131.00 in benefits. She worked 28.23 hours during the week ending May 15, reported \$308.00 in

wages, and was paid \$153.00 in benefits. Afterward, the claimant's wages were over the earnings limit and she did not receive benefits.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was available for work as required by the unemployment insurance law in Iowa Code § 96.4-3.

The rules provide that a claimant is considered unavailable for work if she is not willing to work during the hours when suitable work for the claimant is available. 871 IAC 24.23(16). In this case, the employer had full-time hours available for each of the weeks in question, but the claimant did not pursue working those hours available on May 4 and 11.

The claimant is ineligible for benefits for the weeks ending May 8 and 15, 2010, and the week ending June 19, because she was not available for work as required by law.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated June 7, 2010, reference 01, is reversed. The claimant is ineligible for benefits for the weeks ending May 8 and 15, 2010. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw