

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

WENDY L LOVE
208 N 4TH ST
EDDYVILLE IA 52553

R E ALLEN TRUCKING INC
1027 – 310TH ST
BUSSEY IA 50044

AMENDED
Appeal Number: 04A-UI-00333-H2
OC 11-16-03 R 03
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 8, 2004, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held in Ottumwa, Iowa on March 18, 2004. The claimant did participate. The employer did participate through Randall Allen, Vice President and Verdadean Allen, Secretary.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a truck driver full time working day, evening and overnight hours from April 2003 until December 14, 2003 when she was discharged. The claimant refused to continue working the evening and overnight hours which she had been hired to work and had previously worked because she was having childcare problems and needed to be home with her children in the evenings and overnight. The claimant was hired with the understanding that she would work evenings and overnights. The separation issue delineated herein has been adjudicated in Appeal Number UI-04A-00333.h2.

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.

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.

The claimant was hired as a truck driver knowing that evening and overnight hours would be required of her. The claimant did work evenings and overnight hours until she began to have childcare problems. The claimant is now limiting her hours of availability for work due to childcare problems. Accordingly, benefits are denied, as the claimant is not able to available for work effective November 16, 2003. .

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.

The claimant has been overpaid \$327.00 for the three weeks ending December 13, 2003 as she was making herself unavailable due to these childcare problems.

DECISION:

The January 8, 2004, reference 02, decision is reversed. The claimant is not able to work and available for work effective November 16, 2004. Benefits are denied. The claimant has been overpaid \$327.00.

tkh\kjf