

**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**

**BETTE A GIFFORD
1624 MIAMI DR NE
CEDAR RAPIDS IA 52402**

**REMEDY INTELLIGENT STAFFING INC
c/o TALX UC EXPRESS
PO BOX 66864
ST LOUIS MO 63166-6864**

**Appeal Number: 04A-UI-02647-RT
OC: 01-25-04 R: 03
Claimant: Appellant (4)**

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 - Required Findings (Able and Available for Work)
Section 96.7-2-a-2 – Employer Contributions and Reimbursements (Same Employment-Benefits Not Charged)

STATEMENT OF THE CASE:

The claimant, Bette A. Gifford, filed a timely appeal from an unemployment insurance decision dated March 4, 2004, reference 03, denying unemployment insurance benefits to her as of February 2, 2004. After due notice was issued, a telephone hearing was held on March 31, 2004 with the claimant participating. Kim Ordaz, Staffing Consultant, participated in the hearing for the employer, Remedy Intelligent Staffing, Inc. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant is and, at all material times hereto, was employed by the employer. The employer is a temporary employment agency and the claimant was assigned at all material times hereto to General Mills. No particular hours were promised to the claimant so she worked when work was available and still does. The claimant has placed no restrictions on her ability to work presently. However, from November 2, 2003 until January 5, 2004, the claimant did place restrictions on her ability to work for medical reasons and was off work during that period of time. The claimant returned to the employer and began again working at General Mills on January 5, 2004. The claimant also requested some time off for medical reasons putting a restriction on her ability to work from January 16 through January 26, 2004. The claimant was ready to return to work on January 27, 2004 but the employer could not get the claimant back to the assignment until benefit week ending February 2, 2004. The claimant has placed no other restrictions on her ability to work and has placed no restrictions on her availability to work. The claimant is not seeking work because she remains job attached and was temporarily unemployed from January 27, 2004 through January 31, 2004 or benefit week ending January 31, 2004. The claimant applied for no unemployment insurance benefits prior to returning from her medical absence on January 27, 2004 and not being immediately placed back at General Mills. The claimant filed for unemployment insurance benefits effective January 25, 2004 and received one week of benefits in the amount of \$221.00 for benefit week ending January 31, 2004.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant is ineligible to receive unemployment insurance benefits because she is and was, at all material times hereto, not able, available, and earnestly and actively seeking work. The claimant is not ineligible to receive unemployment insurance benefits for those reasons.
2. Whether the employer should be charged for any unemployment insurance benefits to which the claimant is entitled. The employer should be charged for such benefits.

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".

The administrative law judge concludes that the claimant has the burden of proof to show that she is able, available, and earnestly and actively seeking work under Iowa Code Section 96.4-3

or is otherwise excused. New Homestead v. Iowa Department of Job Service, 322 N.W.2d 269 (Iowa 1982). The administrative law judge concludes that the claimant has met her burden of proof to demonstrate by a preponderance of the evidence that she is able and available for work. The claimant testified that she has placed no current restrictions on her ability or availability for work. The employer's witness, Kim Ordaz, Staffing Consultant, credibly testified that from November 2, 2003 through January 5, 2004 and again from January 16, 2004 through January 26, 2004 the claimant was off work for medical reasons and was not able to work. However, the claimant did not file for or claim any unemployment insurance benefits for these weeks. The claimant was able and available to return to work on January 27, 2004 but the employer could not get the claimant back to the assignee, General Mills, until benefit week ending February 2, 2004. Beginning with benefit week ending February 2, 2004 and continuing thereafter, the claimant is back at work and is not able and available for work but the claimant has made no claims for such period. Accordingly, the administrative law judge concludes that the claimant was able and available for work for the majority of benefit week ending January 31, 2004 and would not be ineligible to receive unemployment insurance benefits for that week. Thereafter, the claimant is not able and available for work because she is back at work and would not be eligible for benefits beginning with benefit week ending February 2, 2004 and continuing thereafter. The claimant was not seeking work for benefit week ending January 31, 2004 but she remained job attached and, even though the employment was not always full-time, the administrative law judge concludes that here the claimant was temporarily unemployed for that week and did not have to be actively and earnestly seeking work.

Accordingly, and for all the reasons set out above, the administrative law judge concludes that for benefit week ending January 31, 2004, the claimant was able, available, and earnestly and actively seeking work or was excused from such provisions and would not be ineligible to receive unemployment insurance benefits for that week. Thereafter, since the claimant is back at work, she would not be able, available, and earnestly and actively seeking work and would be ineligible for unemployment insurance benefits beginning with benefit week ending February 2, 2004 and continuing thereafter until the claimant demonstrates that she is able, available, and earnestly and actively seeking work or is otherwise excused from such provisions.

Iowa Code Section 96.7-2-a(2) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or

to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

The administrative law judge concludes that for benefit week ending January 31, 2004, as noted above, the claimant was not receiving the same employment as she had in her base period and, therefore, the unemployment insurance benefits which the claimant received for that week should be charged to the account of the employer herein. Thereafter, beginning with benefit week ending February 2, 2004, the claimant is receiving the same employment that she received from the employer and any unemployment insurance benefits to which the claimant should be entitled should not be charged to the account of the employer beginning with benefit week ending February 2, 2004 and continuing thereafter as long as the claimant remains employed by the employer and assigned to General Mills as she had been previously.

DECISION:

The representative's decision of March 4, 2004, reference 03, is modified. The claimant, Bette A. Gifford, is entitled to receive unemployment insurance benefits for benefit week ending January 31, 2004, provided she is otherwise eligible, because the claimant was able, available, and earnestly and actively seeking work or was excused from such requirements for that week. The claimant, Bette A. Gifford, is not entitled to receive unemployment insurance benefits for benefit week ending February 2, 2004 and continuing thereafter, because she is back at work and is not able, available, and earnestly and actively seeking work, until or unless she demonstrates that she is able, available, and earnestly and actively seeking work. The employer should be charged for unemployment insurance benefits for benefit week ending January 31, 2004 but, for any benefits thereafter to which the claimant may be entitled, the employer should not be charged so long as the claimant continues to be employed by the employer and assigned to General Mills.

tjc/b