

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEPH P NACHAZEL
Claimant

APPEAL NO. 14A-UI-02049-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNITED PARCEL SERVICE
Employer

OC: 01/12/14
Claimant: Respondent (2)

Section 96.4-3 – Able and Available
871 IAC 24.23(10) – Voluntary Leave of Absence
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

United Parcel Service (employer) appealed a representative's February 17, 2014, decision (reference 01) that concluded Joseph Nachazel (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 17, 2014. The claimant participated personally. The employer participated by John Henson, Business Manager.

ISSUE:

The issue is whether the claimant is available for work and whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired as a full-time delivery driver. The employer had work for the claimant for the week ending January 18, 2014. The claimant chose to not work and let lower seniority employees work that week so the claimant could build his new house.

The claimant filed for unemployment insurance benefits with an effective date of January 12, 2014. He received \$439.00 in benefits after the separation from employment. The employer participated personally at the fact-finding interview on February 4, 2014, by John Henson.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant is not eligible to receive unemployment insurance benefits.

871 IAC 24.23(10) provides:

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

When an employee requests and is granted a layoff, he is considered to be voluntarily unemployed. The claimant requested a lay off and the employer granted his request. The request was initiated by the claimant. He is considered to be voluntarily unemployed during the period of the medical leave of absence. The claimant is not eligible to receive unemployment insurance benefits for the week ending January 18, 2014, because he was not able and available for work.

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 administrative law judge concludes that the claimant was overpaid \$439.00 in unemployment insurance benefits pursuant to Iowa Code Section 96.3-7.

DECISION:

The representative's February 17, 2014, decision (reference 01) is reversed. The claimant is not eligible to receive unemployment insurance benefits for the week ending January 18, 2014, due to his voluntary unemployment. The claimant was overpaid \$439.00 in unemployment insurance benefits.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs