

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SARAH A BLACKETT**  
Claimant

**APPEAL NO. 11A-UI-05273-MT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AVENTURE STAFFING  
& PROFESSIONAL SERVICES**  
Employer

**OC: 04/25/10  
Claimant: Respondent (2-R)**

Section 96.4-3 – Able and Available  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated April 15, 2011, reference 08, which held claimant eligible. After due notice, a telephone conference hearing was scheduled for and held on May 16, 2011. Employer participated by Cyd Hall, office manager. Claimant failed to respond to the hearing notice and did not participate. Exhibit One was admitted into evidence.

**ISSUES:**

Whether claimant is able and available for work.

Whether claimant is overpaid unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds: Employer sent claimant a letter March 17, 2011 indicating that work was available. Claimant did receive the letter. The specific job offered was not detailed in the letter. Claimant completely failed to respond to the letter.

**REASONING AND CONCLUSIONS OF LAW:**

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".

Benefits are withheld effective March 14, 2011 until such time as the claimant proves that she is 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.

This matter is remanded for determination of overpayment.

**DECISION:**

The decision of the representative dated April 15 2011, reference 08, is reversed. Claimant is not eligible to receive unemployment insurance benefits, effective March 13, 2011, until claimant meets all other eligibility requirements. This matter is remanded for determination of overpayment.

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Marlon Mormann  
Administrative Law Judge

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Decision Dated and Mailed

mdm/kjw