

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LORI A TESKA

Claimant

APPEAL NO. 07A-UI-06510-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC

Employer

**OC: 05/20/07 R: 01
Claimant: Respondent (2)**

Section 96.4(3) – Able and Available

Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Stream International, filed an appeal from a decision dated June 20, 2007, reference 03. The decision allowed benefits to the claimant, Lori Teska. After due notice was issued a hearing was held by telephone conference call on July 18, 2007. The claimant did not provide a telephone number where she could be contacted and did not participate. The employer participated by Human Resources Recruiter Jacqueline Kurtz, Human Resources Generalist Staci Albert and Team Manager Brad Rose.

ISSUE:

The issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

Lori Teska was hired by Stream International on October 23, 2006, as a full-time customer service representative. In May 2007 the employer initiated voluntary time off (VTO) during times when call volume was low. No one was required to take time off, and no one would be sent home involuntarily by the supervisor if not enough people went voluntarily. The claimant elected to take the VTO instead of remaining in the call center on the clock.

Lori Teska has received unemployment benefits since filing a claim with an effective date of May 20, 2007.

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".

871 IAC 24.23(29) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

The claimant could have remained "on the clock" instead of taking VTO during the weeks in question. No one was going to be forced to go home and her decision to take advantage of the VTO means she did not work all the hours available to her from her regular employer. Under the provisions of the above Administrative Code section, she is not eligible for benefits.

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 received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of June 20, 2007, reference 03, is reversed. Lori Teska is not eligible for benefits as she is not able and available for work. She is overpaid in the amount of \$189.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs