

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINDA M KREMER
Claimant

**L A LEASING INC
SEDONA STAFFING**
Employer

APPEAL NO: 11A-UI-00177-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/21/10
Claimant: Respondent (4-R)**

Section 96.4-3 – Able and Available
871 IAC 24.23(16) – Suitable Work
Section 96.7-2-a(2) – Relief of Charges
Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

The employer appealed a department decision dated December 29, 2010 reference 04 that held claimant was eligible for benefits as a part-time employee beginning November 21, 2010, no availability disqualification was imposed. A telephone hearing was held on February 9, 2011. The claimant participated. Kathy Hutchison, Branch Manager, and Chad Baker, Work Comp Administrator, participated for the employer.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record, finds: The claimant began working on assignment for her employer at Medplast of Monticello, Iowa on October 7 2010, as a full-time laborer/assembler. The claimant and other workers were notified of a plant shut down for the week ending November 27, but the claimant was advised she could work Monday and Tuesday.

The claimant worked eight hours on Monday, November 22, and she earned \$62.00. The claimant had a pre-scheduled doctor's appointment for Tuesday, so declined to work the eight hours that was made available to her. When the claimant filed an additional unemployment claim the week ending, she reported her earnings of \$62.00, and she received a benefit of \$218.00.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 administrative law judge concludes that the claimant is entitled to a partial unemployment benefit for the week ending November 27, 2010, but it should be reduced due to her unavailability to work eight hours and earn \$62.00 wages for November 23.

The claimant could have worked and earned an additional \$62.00 for the week ending November 27, but her decision to keep the doctor's appointment made her unavailable for work that reduces the amount of her benefit entitlement.

Iowa Code § 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 further concludes the employer is not relieved of charges for a benefit paid to claimant, because she did not work and receive earnings from the employer during her base period.

Iowa Code § 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.

Since the claimant is entitled to a reduced benefit for the week ending November 27, 2010, the recovery of overpayment issue is remanded to claims for a decision.

DECISION:

The department decision dated December 29, 2010, reference 04, is modified. The claimant is eligible for benefits the week ending November 27, 2010, but she limited her availability that reduces her benefit entitlement. The employer is not relieved of charges. The overpayment issue is remanded.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs