

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WAYNE H KROGER
Claimant

APPEAL NO. 06A-UI-11615-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITY OF SIOUX CITY
Employer

OC: 09/17/06 R: 01
Claimant: Respondent (2)

Section 96.4(3) – Able and Available
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, City of Sioux City, filed an appeal from a decision dated November 30, 2006, reference 05. The decision allowed benefits to the claimant, Wayne Kroger. After due notice was issued, a hearing was held by telephone conference call on December 19, 2006. The claimant did not provide a telephone number where he could be contacted and did not participate. The employer participated by Director of Operations Walt Johnson and was represented by Assistant City Attorney Roseanne Lienhard. Exhibit One was admitted into the record.

ISSUE:

The issue is whether the claimant is able and available.

FINDINGS OF FACT:

Wayne Kroger was employed by City of Sioux City beginning October 6, 1988. He was hired as a part-time employee working on-call as needed. There was no guarantee of hours at the time he was hired or at any time during the course of his employment. He signed a document on October 14, 2005, which set out the terms and conditions of his employment.

Wayne Kroger has received unemployment benefits since filing an additional claim with an effective date of October 22, 2006.

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(26) provides:

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

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

The claimant is not able and available for work, as he continues to be employed with his base period employer to the same extent as he was during the entire course of his employment. Under the provisions of the above Administrative Code section, he is therefore not able and available for work.

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 he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of November 30, 2006, reference 05, is reversed. Wayne Kroger is not able and available for work and is ineligible for unemployment benefits. He is overpaid in the amount of \$187.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw