IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

CHERITA M JETT
Claimant

WAL-MART STORES INC
Employer

APPEAL NO. 08A-UI-07489-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/15/08   R: 12
Claimant: Appellant (4)**

Iowa Code § 96.4(3) - Able and Available
Iowa Code § 96.3(7) - Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 18, 2008, reference 02, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on September 3, 2008. Claimant participated. Employer participated through Aaron Feltmeyer.

ISSUE:

The issue is whether claimant is able to and available for work from June 15, 2008 though August 2, 2008 and, if so, whether she is overpaid benefits as a result.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a part-time cashier from November 2007 until August 4, 2008, when she quit. Her last day of work was January 3, 2008, when she transferred back to a Chicago Wal-Mart and took a personal leave of absence from the Burlington, Iowa store to stay with her grandmother and great-grandmother. She stayed awhile after her great-grandmother died and then returned to Iowa on or about June 22, 2008. While working in the Burlington store, she had a family member available to care for her child and worked as late as 9 p.m. She worked no later than 7 p.m. in the Chicago store. When she was ready to leave Chicago and return to Iowa, she relied upon the Chicago store's representation that she must indicate she was available to work until 10 p.m. in order to transfer back to Iowa and that given that concession, her transfer had been approved. When she got to Iowa, the Burlington store told her there was no evidence of her transfer request in the system and she put in her request again. She was available to work as of June 22 even though she was helping family in Oakville, Iowa (25 miles from her residence in Wapello) clean up from flooding. The transfer was not approved until August 4 and when she returned to work on that date, employer had scheduled her to work until 10 p.m., which meant she would require child care until 11 p.m. and there was none available in the area. The Burlington store was not willing to abide by the Chicago store's representation that it would work with her to alter her hours. Her family member had since found other employment and was no longer able to care for claimant's child.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work effective June 22, 2008.

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:
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> 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 24.22(2) provides:

> Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.
>
> (2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Claimant had no limitation on her employability effective June 22, 2008 because of her reliance on the Chicago store's representations about the transfer approval and the erroneous information about the hours she would have to agree to work. Accordingly, benefits are allowed.

The next issue is whether claimant is overpaid.

Iowa Code § 96.3-7, as amended in 2008, provides:

> 7. Recovery of overpayment of benefits.
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> 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 has not been overpaid unemployment insurance benefits in the amount of $1,485.00 as stated by the representative's decision. However, claimant is overpaid $207.00 pursuant to Iowa Code § 96.3(7) because the availability issue has now been modified in favor of the appellant.

DECISION:

The August 18, 2008, reference 02, decision is modified in favor of the appellant. The claimant is able to work and available for work effective June 22, 2008. Benefits are allowed. Claimant has been overpaid unemployment insurance benefits in the amount of $207.00. Since $639.00 in benefits was already offset during the three weeks ending August 30, 2008 to recover the overpayment that has been modified, claimant is currently owed $432.00 of benefits and Iowa Workforce Development may retain $207.00 of the offset amount.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

dml/kjw