

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JOHNIE D HARLEN
Claimant

HEARTLAND LAWN AND OUTDOOR INC
Employer

APPEAL 15A-UI-11043-JCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/06/15
Claimant: Respondent (2R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available – Benefits Eligibility Conditions
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed an appeal from the September 29, 2015, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 16, 2015. Although properly notified for the hearing, the claimant did not furnish a phone number for itself or representative to participate. The employer participated through Beth Karmath. Dustin Karmath also testified for the employer. Employer exhibits 1 (1 through 1-F) were admitted into evidence.

ISSUES:

Is the claimant able to and available for work?
Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed part-time as a laborer and last performed work on September 6, 2015.

On August 14, 2015, the claimant performed work. The claimant went to the state fair on August 15, 2015, where he reportedly consumed four energy drinks and caffeine pills before having a seizure. The claimant informed the employer he could not perform work but worked light duty during the week of August 17 through 23, 2015 for a total of 9 hours, and during the week of August 24 through August 30, 2015 for a total of 8 hours. The claimant said he could return to work and was told to leave a doctor's note. The claimant worked a full week between August 31 until September 6, 2015, when the employer discovered the claimant did not provide a release and was still exhibiting signs of impairment. The claimant did not return to work after September 6, 2015, but filed a claim for benefits with an original claim date of September 6, 2015.

The employer on September 15, 2015, asked the claimant via text message about his status, as he had not arrived to work or alternately provided any updated medical documentation either releasing the claimant, or alternately, requested a leave of absence. The claimant responded via text message, "I still(sp) not able to go back to work. Don't think there(sp) gonna let me go back to be honest. More like looking at surgery. On shoulder or neck" (employer exhibit 1-F). No doctor's release has been provided to the employer through the hearing date. The employer has not heard from the claimant since September 15, 2015 and permanent separation occurred during that time.

Since filing a claim for unemployment benefits, with an original claim date of September 6, 2015, the claimant had received a total of \$1310 in unemployment benefits through the benefit week ending October 10, 2015.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work. The claimant has been overpaid benefits.

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".

Iowa Admin. Code r. 871-24.23(35) provides:

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

(35) Where the claimant is not able to work and is under the care of a physician and has not been released as being able to work.

The claimant discontinued performing work as a result of being physically unable to perform the work due to a personal injury and has not been released by a doctor. Accordingly, the claimant is not able to and available for work; benefits are denied.

DECISION:

The September 29 (reference 01) decision is reversed. The claimant is not able to work and available for work effective September 6, 2015. Benefits are denied. The claimant has been overpaid benefits in the amount of \$1310.

REMAND:

The permanent separation issue delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

jlc/pjs