

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANTHONY C BAYLARK

Claimant

APPEAL NO. 09A-UI-15502-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC

Employer

**Original Claim: 10/12/08
Claimant: Respondent (4-R)**

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The employer, West Liberty Foods, filed an appeal from a decision dated October 8, 2009, reference 05. The decision allowed benefits to the claimant, Anthony Baylark. After due notice was issued, a hearing was held by telephone conference call on December 3, 2009. The claimant participated on his own behalf and was represented by John Wright. The employer participated by Human Resources Manager Jean Spiesz.

ISSUE:

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

FINDINGS OF FACT:

Anthony Baylark began employment with West Liberty Foods on January 8, 2007. He is currently employed as a full-time boxer on the second shift. The current decision found the claimant able and available for work beginning August 24, 2009, and he filed weekly claims through October 10, 2009. During that time, he reported wages earned each week. Some weeks he did not work full-time because he was sent home early due to lack of work. During the week ending August 29, 2009, he was absent three days due to illness.

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 was able and available to work his full scheduled hours for each week except the week ending August 29, 2009. During that week, he was gone three days for illness and/or family matters. Under the provisions of the above Administrative Code section, he was not able and available for work that week.

Iowa Code section 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.

The claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of October 8, 2009, reference 05, is modified in favor of the appellant. Anthony Baylark was able and available for work except for the week ending August 29, 2009. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw