

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BUALOY R THONGSOUK

Claimant

APPEAL NO. 13A-UI-07296-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AUTOMATIC MACHINE PRODUCTS INC

Employer

OC: 11/11/12

Claimant: Respondent (2)

Iowa Code § 96.4(3) – Able and Available

Iowa Code § 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer filed an appeal from the June 14, 2013 (reference 02) unemployment insurance decision that allowed benefits. After due notice was issued a hearing was held on July 22, 2013. Claimant did not participate. Employer participated through Melissa McVicker. Employer's Exhibit One was entered and received into the record.

ISSUES:

Did the claimant refuse a suitable offer of work and was she able to and available for work?

Has she been overpaid unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is employed part time as a packager/general laborer beginning in April 2012 through date of hearing as she remains employed. Since the time of her hire the employer has provided the claimant with on average 20 to 25 hours per week. The claimant has not refused an offer to be an employee, as she is currently employed by this employer, but has refused to work all the hours that were available to her from the employer.

For the week ending May 11 the claimant worked a total of four hours. She was offered and refused to work twelve additional hours. The claimant refused the work during this week because she was assisting her ill mother. For the week ending May 18 the claimant worked three hours. She was offered an additional seventeen hours but did not work those hours as she was not feeling well. For the week ending May 25 the claimant did not work at all. At least twenty to twenty-five hours were available to her. The claimant did not work at all that week as she suffered a miscarriage. For the week ending June 1, 2013 the claimant worked nine hours. She did not call or show up for work on May 29 despite indicating to the employer she would be at work that day. The claimant could have worked at least an additional four hours that week.

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.

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(1) and (16) provide:

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

(1) An individual who is ill and presently not able to perform work due to illness.

(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 for a variety of reasons, including personal illness family illness or simply a refusal to work, the claimant was not able to and available for work for the entire period from May 7, 2013 through the week ending June 1, 2013. Accordingly, benefits are denied.

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.

Because the claimant is not considered able to or available for work, benefits were paid to which the claimant was not entitled. The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3(7). In this case, the claimant has received benefits but was not eligible for those benefits. The claimant has been overpaid a total of \$676.00 for the five-week period ending June 1, 2013.

DECISION:

The June 14, 2013, (reference 02) decision is reversed. The claimant is not able to work and available for work effective May 13, 2013 through the week ending June 1, 2013. Benefits are denied. The claimant has been overpaid unemployment benefits in the total amount of \$676.00 and she is required to repay that overpayment to the agency.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css