

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARY E NORD**

Claimant

**APPEAL NO. 07A-UI-02458-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**COMMUNITY ACTION OF EASTERN IOWA**

Employer

**OC: 01/07/07 R: 12  
Claimant: Respondent (2)**

Section 96.4(3) – Able & Available  
Section 96.3(7) – Recovery of Overpayment

**STATEMENT OF THE CASE:**

Community Action of Eastern Iowa filed a timely appeal from the March 7, 2007, reference 03, decision that allowed benefits. After due notice was issued, a hearing was held on March 20, 2006. Claimant Mary Nord participated. Pamela damHorst, Benefits Administrator, represented the employer. Claimant's Exhibits A and B were received into evidence. The administrative law judge took official notice the decision entered by Administrative Law Judge Beth Scheetz in Appeal Number 07A-UI-01098-S2T, including claimant's Exhibit A, which was received into evidence and considered by Judge Scheetz in that deciding that matter.

**ISSUE:**

Whether the claimant has been mentally and physically able to work and available for work since February 25, 2007.

Whether the claimant has been overpaid benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant's separation from the employment with Community Action of Eastern Iowa was addressed by Administrative Law Judge Beth Scheetz in the decision entered on February 15, 2007, in Appeal Number 07A-UI-01098-S2T. Judge Scheetz concluded that the employer had discharged Ms. Nord on December 8, 2006, for no disqualifying reason and, therefore, that Ms. Nord would be eligible for benefits, provided she was otherwise eligible. Ms. Nord's ability to work and availability for work prior to February 25, 2007 was also addressed and determined by Judge Scheetz in the same decision. Judge Scheetz concluded that Ms. Nord had not been available for work since establishing her claim for benefits and, therefore, was not eligible for benefits. Neither party appealed Judge Scheetz's decision and, therefore, the decision became a final agency decision.

The present matter concerns only whether Ms. Nord has been available for work since Judge Scheetz's decision entered on February 25, 2007. The only new medical information Ms. Nord

has provided Iowa Workforce Development since the entry of Judge Scheetz's decision was a February 28, 2007, brief memorandum from Mark J. Ziebarth, APRN, CNS, of Central Minnesota Mental Health Center. Mr. Ziebarth states, "It is my opinion that Mary [Nord] is stable and able to seek and maintain employment. If you have any further questions, please feel free to contact me." Ms. Nord had previously been diagnosed with depression and has received ongoing treatment for that condition. Mr. Ziebarth's memorandum was intended to address the impact of Ms. Nord's mental health condition on her ability to work. Ms. Nord had previously received treatment for her mental health condition as well as treatment for severe bone degenerative disease at the University of Iowa hospitals and clinics. On November 16, 2006, Erika J. Lauer, M.D., a Resident in the University of Iowa Hospitals & Clinics (UIHC) Department of Psychiatry, had issued a memorandum that provided as follows:

Mary Nord has been under the care of our clinic since 10/6/06. She had recently been hospitalized due to medical illness. She remains unable to work due to medical reasons. We cannot determine when she will be able to return to work at this time.

The degenerative disease has impacted Ms. Nord's spine and feet. On or about November 20, 2006, John L. Famino, M.D., of the UIHC Department of Orthopaedics and Rehabilitation, issued a medical release that indicated as follows: "Mary Nord was seen 10/5/06 in our clinic for a medical appointment." The release further indicated, "Patient may return to work on November 20, 2006" for "sedentary work with sit, stand option." Ms. Nord has provided Iowa Workforce Development with no more recent medical documentation of her physical abilities or restrictions.

On October 10, 2006, Ms. Nord relocated to Minnesota. On February 1, 2007, Ms. Nord applied to the Minnesota Department of Employment and Economic Development for vocational rehabilitation assistance. Ms. Nord has since received job placement assistance from that agency. Ms. Nord believes she is able to perform receptionist, clerical, or telephone duties. However, Ms. Nord indicates that she cannot lift more than 20 pounds, cannot sit for more than two hours before needing to stand and walk around, and cannot stand for significant periods. Ms. Nord indicates she can walk unassisted for a distance of three blocks, but utilizes a cane for longer distances. Ms. Nord continues to rely upon multiple medications to assist her in dealing with her physical as well as mental health issues.

Ms. Nord established a claim for benefits that was effective January 7, 2007. Ms. Nord has received benefits totaling \$1,072.00 since the claims representative's reference 03 decision deemed her eligible for benefits effective February 25, 2007.

## **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 24.22(1)a 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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Despite the employer's repeated protestations that Ms. Nord should be ineligible for benefits because she cannot perform the duties of her previous position, 871 IAC 24.22(1) makes clear that this is not the appropriate test. Instead, the test is whether Ms. Nord can engage in some gainful employment engaged in by others as a means of livelihood. Unfortunately, the greater weight of the evidence indicates that Ms. Nord cannot meet this more relaxed measure of her ability to work. The administrative law judge has deep sympathy for Ms. Nord as she struggles with her physical and mental health issues. However, the greater weight of the evidence indicates that Ms. Nord has not been physically able to work since February 25, 2007. The fact that a nurse practitioner deems Ms. Nord mentally capable of seeking and maintaining work does not answer the question of whether Ms. Nord is physically able to work. The medical evidence concerning Ms. Nord's physical ability to work is dated, but suggests serious limitations. Ms. Nord's testimony indicated multiple physical restrictions that make her essentially unemployable at this time. The administrative law judge concludes that Ms. Nord has not in fact been physically able to work since she established her claim for benefits, or since February 25, 2007, and is, therefore, not eligible for benefits.

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.

Because Ms. Nord has received benefits for which she has been deemed ineligible, those benefits constitute an overpayment Ms. Nord must repay to the Agency. Ms. Nord is overpaid \$1,072.00.

**DECISION:**

The Agency representative's March 7, 2007, reference 03, decision is reversed. The claimant has not been physically able to work since establishing her claimant for benefits. The claimant is overpaid \$1,072.00.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/kjw