

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EVA L ABBOTT
Claimant

APPEAL NO. 13A-UI-07026-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IAC IOWA CITY LLC
Employer

OC: 07/08/12
Claimant: Respondent (2R)

Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

IAC Iowa City, LLC filed a timely appeal from the representative's decision dated June 4, 2013, reference 01, which held the claimant eligible to receive unemployment insurance benefits beginning May 5, 2013 finding that the claimant was employed part time or working on-call, finding the claimant able and available for work. The decision also found employer's account to be chargeable because the claimant was not performing work in the same pattern of employment in the base period. After due notice was provided, a telephone hearing was held on July 16, 2013. Although duly notified, the claimant did not respond to the notice of hearing and did not participate. The employer participated by Ms. Maureen Welch, Human Resource Representative. Employer's Exhibits A, B, C, D, E and F were received into evidence.

ISSUE:

At issue in this matter is whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered the evidence in the record, finds: Eva Abbott began employment with IAC Iowa City, LLC on March 26, 2010. The claimant continues to be employed full time at the time of hearing of this matter. Ms. Abbott works as a full-time injection pump operator and is paid by the hour.

Ms. Abbott began a one-week vacation that began on May 5, 2013. The claimant had specifically requested vacation time off from her employer and the claimant had been paid for her vacation week in advance per the bargaining agreement between the union and the employer.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the claimant is able and available for work and eligible to receive unemployment insurance benefits during the week commencing May 5, 2013. She is not.

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".

In order to be eligible for unemployment insurance benefits an individual must be unemployed, apply for benefits and meet all eligibility requirements.

Section 96.5-7 of the Employment Security Law provides that the receipt of vacation pay shall be deemed "wages" as defined in section 96.19, subsection 41.

The evidence in the record establishes that Ms. Abbott was not employed part time, on-call or partially unemployed during the week beginning May 5, 2013. The claimant continued to be employed at her regular job but was off work because she had requested vacation time away from work. The claimant had also been fully paid for the week of vacation time in advance of the vacation as required by the provisions of the union/business bargaining agreement.

As the claimant was on an authorized vacation at her request and was fully remunerated for the week of May 5, 2013, the administrative law judge concludes that the claimant was not available for work within the meaning of the Employment Security Law and not unemployed because the claimant was receiving full remuneration for the week in question.

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.

Because the claimant has been deemed ineligible for benefits any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment and whether the claimant will have to repay the benefits.

DECISION:

The representative's decision dated June 4, 2013, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits beginning May 5, 2013. The claimant was not available for work and was not unemployed. The claimant received full pay for the week in question in advance from her employer and therefore was not unemployed within the meaning of the law and was not available for work. The claimant is disqualified from receiving unemployment insurance benefits beginning May 5, 2013 as she was receiving vacation pay and was not available for work. The matter of the claimant's potential overpayment of benefits is remanded to the Claims Section for investigation and determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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