

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RYAN J BENNIEN

Claimant

APPEAL NO. 11A-UI-12098-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

NEIGHBORHOOD PATROL INC

Employer

OC:08/07/11

Claimant: Respondent (2R)

Section 96.4-3 – Able and Available
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated September 12, 2011, reference 02, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on October 11, 2011. Claimant participated. Employer participated by Dick Rogerson, director of human resources. The record consists of the testimony of Dick Rogerson and the testimony of Ryan Bennien.

ISSUES:

Whether the claimant is able and available for work; and
Whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer supplies security guards to corporate clients. The claimant was hired on November 16, 2010. In the interview that preceded his hiring, the claimant told the employer that he could work second or third shift. He could also work weekends and holidays. The claimant was hired with the understanding that he would be able to work on weekends. The claimant's last day of work was August 9, 2011.

On or about June 13, 2011, the claimant got a second job that required him to work on Saturdays. He was the doorman/bouncer at a club. In the first or second week of July 2011, the claimant told the employer that he could no longer work weekends and holidays due to his new job. The security business is a 24/7 operation on all days of the year. Demand for security guards is especially high during weekends and holidays. The employer could not keep the claimant employed full time because of the claimant's new limit on when he could work.

REASONING AND CONCLUSIONS OF LAW:

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(16) provides:

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

(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 evidence in the record establishes that the claimant has limited his availability for work by limiting the days that he is willing to work in his occupation. The claimant was hired with the expectation that he would work weekends and holidays on the second and third shift. Demand for security work is especially high on weekends and holidays. The claimant got a second job and limited his availability for work by refusing weekends and holidays. Because the claimant unduly limited his work hours, he is disqualified from receiving benefits.

The next issue is overpayment of benefits.

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.

The overpayment issue is remanded to the claims section for determination.

DECISION:

The unemployment insurance decision dated September 12, 2011, reference 02, is reversed. The claimant does not meet the availability requirements of the law and benefits are denied. The overpayment issue is remanded to the claims section for determination.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs