

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICKY BARK
Claimant

APPEAL NO: 08A-UI-00727-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

IPSCO TUBULARS INC
Employer

OC: 04-01-07 R: 04
Claimant: Respondent (2)

Section 96.4-3 – Able and Available for Work
Section 96.4-3 – Same Hours and Wages
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 18, 2008, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 5, 2008. The claimant did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Kathy Feldt, Human Resources Specialist and Scott Tichler, Production Area Leader, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant is able and available for work and is still employed with the employer for the same hours and wages as contemplated in the original contract of hire.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer experienced a plant shutdown from December 23, 2007 to January 2, 2008, but offered employees the opportunity to work during that time. The claimant received holiday pay December 24, 25, 2007, and January 1, 2008. He used a vacation day December 31, 2007. The employer had work available December 26 through December 29, 2007. He returned to work January 3, 2008.

The claimant claimed and received benefits for the week ending December 29, 2007.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is still employed at the same hours and wages as contemplated in the original contract of hire but was not able and available for work the week of the plant shutdown.

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".

There has been no separation from the claimant's full-time employment and the claimant is currently working for this employer at the same hours and wages as contemplated in the original contract of hire. The claimant is disqualified from receiving benefits for the week ending December 29, 2007, however, because work was available to him during the plant shutdown and he chose not to accept employment that week. The claimant did not participate in the hearing and provide a good cause reason for not accepting employment that week. For the above stated reasons the administrative law judge must conclude the claimant was not able and available for work the week ending December 29, 2007. Therefore, benefits are denied for that week.

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 the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The January 18, 2008, reference 01, decision is reversed. The claimant is still employed at the same hours and wages as in his original contract of hire but was not able and available for work

the week ending December 29, 2007. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. He is overpaid benefits in the amount of \$132.00.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs