

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CRYSTAL D SEVERSON**  
Claimant

**APPEAL NO. 07A-UI-05832-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ADVANCE SERVICES INC**  
Employer

**OC: 03/11/07 R: 03  
Claimant: Respondent (2)**

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

**STATEMENT OF THE CASE:**

Advance Services (employer) appealed a representative's May 29, 2007 decision (reference 05) that concluded Crystal Severson (claimant) eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 27, 2007. The claimant participated personally. The employer participated by Tami Dostart, Office Manager.

**ISSUE:**

The issue is whether the claimant was able and available for work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked for the employer as a temporary worker from May 2005, to March 17, 2006.

On May 8, 2007, the employer offered the claimant a full-time long-term job at GSPC paying \$8.25 per hour. The claimant refused the offer of work because she did not have transportation to a location more than five miles from her residence or child care during regular day time hours. The claimant told the employer that she would notify the employer when she had day care in place. The claimant never contacted the employer to say she was available. The job is still open.

The claimant filed a new claim for unemployment insurance benefits with an effective date of March 11, 2007. The claimant's average weekly wage during her highest quarter of wages was \$516.58.

**REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the claimant is able and available for work. Before a claimant can be disqualified from receiving unemployment insurance benefits for refusing an offer of suitable

work , the claimant must be able and available for work. 871 IAC 24.24(4). The claimant was not able and available for work.

871 IAC 24.23(4) provides:

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

(4) If the means of transportation by an individual was lost from the individual's residence to the area of the individual's usual employment, the individual will be deemed not to have met the availability requirements of the law. However, an individual shall not be disqualified for restricting employability to the area of usual employment. (See subrule 24.24(7).

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.

871 IAC 24.23(8)

Where availability for work is unduly limited because of not having made adequate arrangements for child care.

The claimant could only accept work within five miles because she did not have transportation. In addition, the claimant could only accept work at 11:00 a.m. or later. When a claimant's has no means of transportation to employment, no child care or has limited her hours of work, the claimant is deemed to not be available for work. The claimant is disqualified from receiving unemployment insurance benefits because she is not available for work with another employer.

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.

The claimant has received benefits since filing her claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

**DECISION:**

The representative's May 29, 2007 decision (reference 05) is reversed. The claimant is disqualified from receiving unemployment insurance benefits because she is not available for work with another employer. The claimant is overpaid benefits in the amount of \$1,477.00.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs