

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

LISA D KEIS  
1407 W 15<sup>TH</sup> ST  
DAVENPORT IA 52804

COUNTY OF SCOTT  
ATTN PERSONNEL DEPT  
416 W 4<sup>TH</sup> ST  
DAVENPORT IA 52801-1187

Appeal Number: 04A-UI-10612-HT  
OC: 09/05/04 R: 04  
Claimant: Respondent (2-R)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The employer, County of Scott, filed an appeal from a decision dated September 27, 2004, reference 01. The decision allowed benefits to the claimant, Lisa Keis. After due notice was issued a hearing was held by telephone conference call on October 20, 2004. The claimant participated on her own behalf. The employer participated by Human Resources Generalist Jill Beitel.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Lisa Keis began employment with Scott County on October 28, 2002. She was a full-time driver and laborer.

On June 21, 2004, Ms. Keis was subject to a random drug test. The results came back positive for a controlled substance and her last day of work was June 24, 2004. She was suspended with pay and referred to the Employee Assistance Program for evaluation with the instruction that she was to comply with the recommendations of the substance abuse counselor.

The counselor referred her to outpatient treatment for five to ten weeks, depending on her progress, and referred to another counseling group for personal problems. On July 12, 2004, Ms. Keis was given a return-to-work drug test which was positive for another controlled substance. Per the employer's policy she was suspended for 30 days due to the second positive test. On July 28, 2004, she was referred to an intensive outpatient treatment program and for methadone. The substance abuse counselor, Nancy Phelps, advised the claimant and the employer that Department of Transportation regulations prohibited individuals with a commercial driver's license from operating commercial vehicles while using methadone.

On August 27, 2004, the employer sent the claimant a letter notifying her that her time off for the outpatient treatment would be considered family medical leave since she had exhausted her accumulated paid time off. Ms. Phelps has not released the claimant to return to work nor certified to the employer that she has completed the treatment plan.

The claimant's employment ended October 14, 2004, but the separation was not reported to Iowa Workforce Development and no determination has been made.

Lisa Keis has received unemployment benefits since filing a claim with an effective date of September 5, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is able and available for work. The judge concludes 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".

The claimant was on a leave of absence to undergo substance abuse treatment. She failed two drug tests, the second one a return-to-work test, which prohibited her from returning to her regular duties while undergoing treatment. In addition, she is on methadone which prohibits her from driving under the federal Department of Transportation regulations. She is not available to her regular employer, or in her usual occupation as a commercial truck driver, due to being under treatment for substance abuse.

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 unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

The issue of the claimant's separation from employment has not been determined.

#### DECISION:

The representative's decision of September 27, 2004, reference 01, is reversed. Lisa Keis is not able and available for work and is not eligible to receive unemployment benefits. She is overpaid in the amount of \$1,780.00.

The issue of the claimant's separation from employment on October 14, 2004, is remanded to the Claims Section for determination.

bgh/tjc