IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JULIE A INGLES
Claimant

CARGILL MEAT SOLUTIONS CORPORATION
Employer

APPEAL NO: 09A-UI-01608-S2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 11/09/08 R: 03
Claimant: Respondent (2)R

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

STATEMENT OF THE CASE:

Cargill Meat Solutions (employer) appealed a representative's January 22, 2009 decision (reference 01) that concluded Julie Ingles (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 20, 2009. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Alicia Alonzo, Human Resources Generalist.

ISSUE:

Whether the claimant is 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 was hired on August 5, 1988, as a full-time production worker. The claimant filed for unemployment insurance benefits with an effective date of November 9, 2008. For the weeks ending November 15 through December 20, 2008, the claimant filed for unemployment insurance benefits. During those weeks the employer had plenty of work for the claimant. The claimant took time off for an unknown reason.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant was not available for work.

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.

When an employee requests and is granted time off, she is considered to be unavailable for work. The claimant requested a reduction of her hours and the employer granted her request. The change in hours was initiated by the claimant. She is considered to be unavailable for work from November 9 through December 20, 2008. The claimant is disqualified from receiving unemployment insurance benefits for that period due to her unavailability for work.

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.
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> 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 states pursuant to section 602.10101.

The claimant has received benefits since filing the claim herein. Pursuant to this decision, those benefits may now constitute an overpayment. The issue of the overpayment is remanded for determination.

DECISION:

The unemployment insurance decision dated January 22, 2009, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits because she was not available for work with the employer from November 9 through December 20, 2008. The issue of the overpayment is remanded for determination.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/css