

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL J RANEY
Claimant

APPEAL NO. 10A-UI-14195-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BELLE PLAINE NURSERY INC
Employer

OC: 09/26/10
Claimant: Respondent (4-R)

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The employer, Belle Plaine Nursery, filed an appeal from a decision dated October 8, 2010, reference 02. The decision allowed benefits to the claimant, Daniel Raney. After due notice was issued a hearing was held by telephone conference call on November 29, 2010. The claimant participated on his own behalf. The employer participated by Owner Nick Wille.

ISSUE:

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

FINDINGS OF FACT:

Daniel Raney was employed by Belle Plaine Nursery beginning August 23, 2010 as a full-time field worker. The week from September 19 through 25, 2010, he worked three days and was off two due to rain. He filed a claim for benefits for that week but did not report any wages although the employer estimated his earnings at approximately \$150.00.

REASONING AND CONCLUSIONS OF LAW:

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 worked three days out of five for the employer during the week ending September 25, 2010. He was not laid off but on a reduced basis because of bad weather. He did not report wages earned during that week although he did work the majority of the week.

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.

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 claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of October 8, 2010, reference 02, is modified in favor of the appellant. The claimant worked reduced hours during the week in question due to bad weather

and would be eligible for some benefits as a result. But his failure to properly report wages means he may be overpaid. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs