

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SANDRA L RASMUSSEN**  
Claimant

**APPEAL NO. 10A-UI-16034-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HAWKEYE HEALTH SERVICES INC**  
Employer

**OC: 03/28/10**  
**Claimant: Respondent (2/R)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Hawkeye Health Services (employer) appealed a representative's November 9, 2010 decision (reference 02) that concluded Sandra Rasmussen (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 January 10, 2011. The claimant participated personally. The employer participated by Jan Boleyn, Director of Patient Care, and Heather Sullivan, Clerical Worker.

**ISSUE:**

The issue is whether the claimant is available for work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant worked for the employer from October 2, 2000, to September 27, 2010. During her employment, the claimant was informed of assignments by the director. As of May 7, 2010, the claimant refused any assignments in the afternoon, because she did not have child care for her nine-, ten-, twelve-, and thirteen-year-old children. In June 2010, the claimant refused any evening hours due to lack of child care. The claimant worked through September 27, 2010. On October 11, 2010, the employer offered the claimant morning work, but the claimant refused because she did not want to work at a home where the mother had commented on the claimant's lack of attendance.

To work for the employer, employees had to show proof of a valid drivers' license and auto insurance. The employer repeatedly asked the claimant for proof. Certified letters were sent on October 4, October 15, and November 13, 2010. The claimant provided a copy of her drivers' license on December 1, 2010. The claimant did not have auto insurance after October 15, 2010, because her car was repossessed. When the claimant refused all offers of work and did not provide required documentation, the employer assumed she had quit work.

## REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant is not able and available for work.

871 IAC 24.23(4), (8) and (16) provide:

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).

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

(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. Likewise, if she does not have transportation or child care, 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. The claimant lacked auto insurance and child care. She is considered to be unavailable for work from May 7, 2010. The claimant is disqualified from receiving unemployment insurance benefits from May 7, 2010, 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.

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 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.

The issue of separation from employment is remanded for determination.

**DECISION:**

The representative's November 9, 2010 decision (reference 02) is reversed. The claimant is disqualified from receiving unemployment insurance benefits as of May 7, 2010, because she is not available for work with the employer. The issue of the overpayment and separation are remanded for determination.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/kjw