

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ADRIAN H MORAS

Claimant

APPEAL NO: 15A-UI-00030-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALADDIN FOOD MANAGEMENT SERVICES

Employer

OC: 10/26/14

Claimant: Respondent (3)

Iowa Code § 96.4(3) – Ability to and Availability for Work

Iowa Code § 96.3(7) – Overpayment of Benefits

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's December 22, 2014 (reference 05) determination that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant voluntarily quit this employment for reasons that qualify him to receive benefits. The claimant participated at the February 11 hearing. Suzanne Bassler represented the employer. Ken Zimmerman, the food service director, appeared on the employer's behalf. Ike Rocha interpreted the hearing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not eligible to receive benefits as of December 14, 2014.

ISSUES:

Did the claimant voluntarily quit this employment for reasons that qualify him to receive benefits?

As of December 14, 2014 is the claimant able to and available for work?

Has the claimant been overpaid any benefits since December 14, 2014?

FINDINGS OF FACT:

The claimant started working for the employer in November 2012 as a full-time utility employee in the dish room. Prior to December 15, 2014 the claimant had been on medical leave under the family medical leave act. He had returned to work, but on December 15 the claimant gave the employer a doctor's note that indicated he was restricted from work until further notice. The claimant needs back surgery, but because of other medical issues has not yet had the surgery.

The employer still considers the claimant an employee and when his physician releases him to work, the employer has his job waiting for him. The claimant reopened his claim for benefits and has filed claims for the weeks ending December 20 through February 14, 2015. He has received his maximum weekly benefit amount of \$260 for each of these weeks.

Since December 15, 2014 the claimant has not been looking for full-time work. His physician has not released him to work. The claimant has filed for disability but as of February 11 he has not been granted or denied disability benefits.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for benefits, he must be able to and available for work. Iowa Code § 96.4(3). When the claimant gave the employer his work restrictions on December 15, he did not quit and the employer did not discharge him. Instead, the employer considered the claimant on another leave of absence and continues to hold his job for him. For unemployment insurance purposes, a claimant is not eligible to receive benefits when he is on a leave of absence. 871 IAC 24.23(10). The claimant's ability to and availability for work is restricted by his work restriction. 871 IAC 24.23(35). Also, he has not demonstrated what full time work he is capable of performing. All these factors support the finding that he is not able to and available for work and Ineligible to receive benefit as of December 14, 2014.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3(7). Based on this decision that the claimant is not eligible to receive benefits as of December 14, 2014, he has been overpaid \$2340 in benefits he received for the weeks ending December 27, 2014 through February 14, 2015.

DECISION:

The representative's December 22, 2014 (reference 05) determination is modified in the employer's favor. The claimant did not quit and the employer did not discharge him. Instead, the claimant went back on a leave of absence after he gave the employer his work restrictions on December 15 that indicated he could not do any work. As of December 14, 2014 the claimant is not able to or available for work because of his work restrictions. The claimant will remain ineligible to receive benefits until his physician release him to do full-time work and he reopens his claim and establishes his eligibility to receive benefits. The claimant has been overpaid \$2340 in benefits he received for the weeks ending December 20, 2014 through February 14, 2015, or while he was unable and unavailable for work.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/can