

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STACI R WEDEKING
Claimant

APPEAL NO: 06A-UI-07969-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KAY & L DRAPERIES
Employer

**OC: 07/02/06 R: 03
Claimant: Respondent (2)**

Section 96.4-3 – Ability to and Availability for Work
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Kay & L. Draperies, Inc. (employer) appealed a representative's August 4, 2006 decision (reference 01) that concluded Staci R. Wedeking (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant was still available for work even though she was on a short-term layoff. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 23, 2006. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which she could be contacted to participate in the hearing. As a result, no one represented the claimant. Jerry Thorson, the general manager, and Kimberly Fober appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

When a claimant is on a temporary layoff, is the claimant eligible to receive benefits when the employer has "other" work for the claimant to do and the claimant declines to do the "other" work?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on November 9, 2005. The claimant worked full time finishing drapes.

When over half of the employees asked for time off the week of July 3, the employer decided there would be no production work this week. The employer, however, gave employees an opportunity to work the week of July 3. The employer posted a notice on March 15 indicating employees could earn wages this week by doing general cleaning at the employer's facility. Employees would earn their regular hourly rate of pay and could work their regular hours.

The claimant did not sign up to work the week of July 3 and did not work this week. The claimant received holiday pay for July 4, but she did not have any vacation to use for the rest of the week.

The claimant established a claim for unemployment insurance benefits during the week of July 2, 2006. The claimant filed a claim for benefits for the week ending July 8, 2006. The claimant reported she received \$54.00 in holiday pay. The claimant received \$137.00 in partial unemployment benefits for this week. The claimant returned to work the week of July 9.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for benefits, she must be able to and available for work. Iowa Code section 96.4-3. The law presumes a claimant is not available when she has a choice to work and could have worked but was not willing to work for the employer that temporarily laid her off from work. 871 IAC 24.23(41). The facts establish the claimant chose not to do cleanup or maintenance-type work the employer offered during the week ending July 8, 2006. The claimant could have earned her regular wages the week ending July 8. It is not known why she was not willing to perform work the employer had available. A preponderance of the evidence indicates she was not available for work this week. As a result, the claimant is not eligible to receive benefits for the week ending July 8, 2006.

If an individual receives benefits she 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 section 96.3-7. The claimant is not legally entitled to receive benefits for the week ending July 8, 2006. She has been overpaid \$137.00 in benefits she received for this week.

DECISION:

The representative's August 4, 2006 decision (reference 01) is reversed. The claimant is not eligible to receive benefits for the week ending July 8, 2006, because the employer had work available for her to do, but she chose not to perform the available work. As a result, the claimant has been overpaid and must repay a total of \$137.00 in benefits she received for this week.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs