

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARTA BORGES-OLIVA**  
Claimant

**APPEAL NO: 08A-UI-03039-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HOLIDAY INN - BETTENDORF**  
Employer

**OC: 01-13-08 R: 04**  
**Claimant: Respondent (2)**

Section 96.4-3 – Able and Available  
Section 96.3-7 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the March 17, 2008, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 10, 2008. The claimant did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Diana Hagner, Bookkeeper; Connie Schlichting, General Manager; and Kevin Rafferty, Employer's Representative; participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the claimant is able and available for work and whether she is still employed at the same hours and wages.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired as a full-time housekeeper at Holiday Inn-Bettendorf October 10, 2003. On December 12, 2007, she left for a vacation to Brazil and did not return until January 4, 2008, at which time she resumed working. She was not laid off and the other housekeepers continued to work their regular schedules.

The claimant has claimed and received unemployment insurance benefits since filing for unemployment.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant was not able to work and available for work from December 12, 2007 to January 4, 2008, and is employed at the same hours and wages.

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 went on vacation from December 12, 2007 through January 4, 2008. She was not laid off and has been working her regular hours since her return. Accordingly, benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The March 17, 2008, reference 01, decision is reversed. The claimant was not able to work and available for work effective December 12, 2007 through January 4, 2008, and is working the

same hours for the same wages since that time. Therefore, benefits are denied. The claimant is overpaid benefits in the amount of \$282.00.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs