

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**AMANDA BOYD**  
Claimant

**APPEAL NO. 19A-UI-07542-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RIVERSIDE CASINO AND GOLF RESORT**  
Employer

**OC: 09/01/19  
Claimant: Respondent (1R)**

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871 IA Admin. Code 24.22(2)(1-3) - Layoffs  
Iowa Code § 96.3-7 – Recovery of Overpayment of Benefits  
871 IA Admin. Code 24(10) – Employer Participation in Fact Finding

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated September 20, 2019, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on October 16, 2019. Claimant participated personally. Employer participated by Anna Cavanaugh and Jordan Adams.

**ISSUES:**

Whether claimant was laid off during the time in question?

Whether claimant was overpaid benefits?

If claimant was overpaid benefits, should claimant repay benefits or should employer be charged due to employer's participation or lack thereof in fact finding?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant requested and was granted by employer time off from work to deal with a medical matter. She requested to be off from work August 21-28, 2019. On August 30, 2019 claimant met with her doctor who created restrictions for claimant's return to work. Said restrictions included claimant periodically sitting and using her crutches while at work. Claimant worked primarily as a dealer, but also as a supervisor. Employer did not allow claimant to return to work after claimant visited her doctor on August 30, 2019 as employer stated that it did not have work available that would allow for those accommodations. Claimant argued that there was a dealer position that allows for seating and that she could have been the supervisor on crutches. Employer does not dispute that claimant was able to work in some capacity, just not as a dealer as they wish for dealers to stand, and there is only one sitting table.

Claimant has received unemployment benefits in this matter.

Employer did substantially participate in fact finding in this matter by providing specific information to the fact finder.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Admin. Code r. 871-24.22(2)(1)(2)(3) provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

Iowa Code section 96.3(7)a-b, 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)(a) 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. The employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. This prohibition against relief of charges shall apply to both contributory and reimbursable employers.

(b) 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.

(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.

Iowa Admin. Code r. 871-24.10 provides:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

(2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer's representative in writing after each such appeal.

(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)“b” as amended by 2008 Iowa Acts, Senate File 2160.

Claimant in this matter was not initially laid off, but rather was placed on an agreed-to leave of absence by employer. During the period of time from August 21-30, claimant is seen as absent through the leave of absence. Claimant did not claim unemployment benefits during this period. After that period, claimant argues that she was able and available for work and employer would not let claimant return to work although her restrictions did not inhibit claimant’s ability to do either the dealing or the supervisory activities.

The negotiated leave of absence ended on August 30, 2019. Employer failed to reemploy claimant at this time and she was deemed laid off, although she was unquestionably able to work in some capacity. As such, claimant is eligible for benefits for making herself available after a leave of absence.

But this is not a complete answer to this matter. Claimant’s absence was caused by a body injury that was not work-related. As this injury was not work-related, employer may not have had an obligation to grant claimant her job back or a job considering claimant now had restrictions to her ability to work and employer argues that claimant was unable to do her job with the restrictions claimant’s doctor gave in its August 30, 2019 letter.

The question of whether or not claimant is able and available for work for the period of time between September 1-14, 2019 was not an issue pending before the administrative law judge. This matter is remanded to the fact finder for determination of whether claimant was able and available for work September 1-14, 2019.

The overpayment issue is moot at this time as claimant is currently considered eligible for benefits.

The issue of employer participation was addressed. Employer did substantially participate in fact finding in this matter.

**DECISION:**

The decision of the representative dated September 20, 2019, reference 01, is affirmed as to the separation issue. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

This matter is remanded to the fact finder on a determination of the able and available requirement. The fact finder shall receive evidence from the claimant and employer in this matter.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

bab/scn