

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RACHELLE L DICKINSON
Claimant

APPEAL NO: 06A-UI-10152-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ROSS MARKETING INC
Employer

**OC: 07/30/06 R: 03
Claimant: Respondent (4)**

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

STATEMENT OF THE CASE:

Ross Marketing, Inc. (employer) appealed a representative's October 9, 2006 decision (reference 03) that concluded Rachelle L. Dickinson (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 1, 2006. The claimant participated in the hearing. Shannon Schmidt appeared on the employer's behalf. During the hearing, Employer's Exhibit One was entered into evidence. 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.

ISSUE:

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The claimant started working for the employer on April 25, 2005. Her schedule is to work part time (31 hours per week) as a telephone sales representative in the employer's telemarketing business. The claimant's schedule had been 1:00 p.m. to 8:00 p.m. Monday through Thursday and 12:00 p.m. to 2:00 p.m. on Friday. As of approximately September 3 this was changed to address some of the claimant's scheduling issues to 5:00 p.m. to 10:00 p.m. Monday through Friday and 9:00 a.m. to 3:00 p.m. on Saturday.

In July and August the employer had some days or weeks that the claimant was sent home early or told not to come in to work due to a lack of work. However, beginning September 3 the employer had work available for the claimant for all of the hours she was scheduled to work. Another telephone sales representative on the same schedule routinely worked approximately the scheduled 31 hours each week. However, the claimant had numerous days each week after September 3 where she did not report for work or where she came in late or left early and so had reduced hours. Some of the days the claimant either did not work or worked reduced

hours were due to problems with her transportation arrangements; at least one of the days she worked no hours was due to having a court appearance.

The claimant established a claim for unemployment insurance benefits effective July 30, 2006. The claimant has received unemployment insurance benefits for weeks after September 3, 2006 in the amount of \$503.00.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is eligible for unemployment insurance benefits by being able and available for employment.

Iowa Code § 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".

871 IAC 24.23(29), (41) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

(41) The claimant became temporarily unemployed, but was not available for work with the employer that temporarily laid the claimant off. The evidence must establish that the claimant had a choice to work, and that the willingness to work would have led to actual employment in suitable work during the weeks the employer temporarily suspended operations.

This rule is intended to implement Public Law 96-499, Iowa Code §§ 96.4(3), 96.5(1), 96.6(1), 96.19(38)"c" and 96.29.

A claimant is not eligible for partial unemployment insurance benefits when her availability for work is limited so that she is working reduced hours due to a lack of transportation or due to personal obligations that preclude a claimant from working her scheduled hours. 871 IAC 24.23(4), (16). As of September 3, 2006, benefits are denied until such time as the claimant has removed the availability limitations.

Iowa Code § 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 representative's October 9, 2006 decision (reference 03) is modified in favor of the employer. Effective September 3, 2006, the claimant was not able and available to work the hours provided for her by the employer. The claimant is not qualified to receive unemployment until such time as her she becomes fully available to work. The claimant is overpaid benefits in the amount of \$503.00.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs