

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WINTER M HUBER
Claimant

APPEAL NO: 08A-UI-01591-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DUBUQUE COUNTY
Employer

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

Section 96.4-3 – Able and Available
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Dubuque County (employer) appealed a representative's February 6, 2008 decision (reference 01) that concluded Winter Huber (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 3, 2008. The claimant participated personally. The employer participated by Donna Parker, Nutrition Director, and Cathy Hedley, Administrator. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant is disqualified for being unavailable for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on May 17, 2007, as a part-time dietary aid. She consistently worked 15 to 20 hours per week with this employer. The claimant earned the majority of her wages from the employer. The claimant filed for unemployment insurance benefits with an effective date of January 13, 2008, when her other part-time job ended.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is still employed at the same hours and wages.

871 IAC 24.23(26) provides:

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

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced

workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

The claimant was hired as a part-time worker and is still working part-time for the employer. She is still employed in a part-time position as was agreed to at the time she was hired. The claimant is disqualified from receiving unemployment insurance benefits.

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.

The claimant has received benefits since filing the claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

DECISION:

The representative's February 6, 2008 decision (reference 01) is reversed. The claimant is disqualified from receiving unemployment insurance benefits because she was still working part-time for the employer. The claimant is overpaid benefits in the amount of \$184.00.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs