

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ENISA HAMZAGIC**  
Claimant

**APPEAL NO. 07A-UI-07851-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**STONEY CREEK INVESTORS OF  
DES MOINES**  
Employer

**OC: 07/08/07 R: 02**  
**Claimant: Respondent (2)**

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

**STATEMENT OF THE CASE:**

Stoney Creek Investors of Des Moines (employer) appealed a representative's August 8, 2007 decision (reference 01) that concluded Enisa Hamzagic (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 August 30, 2007. The claimant participated personally through Zijo Suceska, Interpreter. The employer participated by Steven Noto, Chief Financial Officer. The employer offered one exhibit which was marked for identification as Exhibit One. 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 September 21, 2005, as a full-time housekeeper earning \$8.75 per hour. The contract indicates that full time employees work at least 30 hours per week or 60 hours over a two-week period. She was paid for an average of 42 hours per week from January 6 through July 28, 2007. For the week ending July 14, 2007, the claimant worked 40.27 hours. For the week ending July 21, 2007, she worked 38.32 hours. For the week ending July 28, 2007, the claimant worked 36.67 hours.

**REASONING AND CONCLUSIONS OF LAW:**

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".

871 IAC 24.23(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

When an employee is working so much that she is not available to work more hours, she is considered to be unavailable for work. The claimant is considered to be unavailable for work after July 8, 2007, because she is working full-time hours. The claimant is disqualified from receiving unemployment insurance benefits beginning July 8, 2007, due to her unavailability for work.

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 her claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

**DECISION:**

The representative's August 8, 2007 decision (reference 01) is reversed. The claimant is disqualified from receiving unemployment insurance benefits because she was not available for work after July 8, 2007. The claimant is overpaid benefits in the amount of \$65.00.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs