

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**VICTOR SIMMONS**

Claimant

**APPEAL NO. 13A-UI-13195-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CENTRAL IOWA KFC INC**

Employer

**OC: 11/03/13**

**Claimant: Respondent (2R)**

Section 96.4-3 - Able to and Available for Work

Section 96.3-7 - Overpayment of Benefits

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated November 27, 2013, reference 01, that concluded claimant was working part-time or on-call and was available for work. A telephone hearing was held on December 18, 2013. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Glenn Johnson participated in the hearing on behalf of the employer. Official notice is taken of the Agency's records regarding the claimant's unemployment insurance claim, which show the claimant filed a claim for unemployment insurance benefits effective November 3, 2013, stating he was still working and listing the employer as his most recent employer. If a party objects to taking official notice of these facts, the objection must be submitted in writing no later than seven days after the date of this decision.

**ISSUE:**

Was the claimant able to and available for work?

**FINDINGS OF FACT:**

The claimant worked part time as a cook about 15 to 30 hours per week from August 3, 2012, to November 2, 2013. In September 2013, the claimant informed his manager that he had another job from noon to 10:00 p.m. and could only work in the morning or on the weekends. The employer had no morning shifts and scheduled the claimant on weekends only to accommodate his request. Afterward, the claimant never asked for any additional hours.

During the week of November 3 to 9, the claimant was scheduled to work on November 9. He filed a claim for unemployment insurance benefits effective November 3, 2013, stating he was still working and listing the employer as his most recent employer. He came into the store on November 8 to pick up his paycheck for the prior week. He did not say anything to management about wanting more hours.

The claimant was absent from work on November 9 and did not call in to notify the employer as the employer's rules provide. He also would have been on the schedule to work sometime the following weekend.

The claimant filed two weekly claims for benefits for the week ending November 9 and 16. He received \$124.00 per week, for a total of \$248.00 in benefits. He did not report any wages either week.

### **REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was eligible for benefits effective November 3, 2013.

Iowa Code § 96.19-38-b provides:

b. An individual shall be deemed partially unemployed in any week in which, while employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

An individual shall be deemed partially unemployed in any week in which the individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

871 IAC 24.23(16) provides that a claimant is unavailable for work: "Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available." In this case, the claimant reduced the hours he was available to work. During the two weeks that the claimant filed for unemployment insurance benefits the employer had scheduled hours but did not report to work. The claimant has not shown he was able to and available for work effective November 3, 2013.

The unemployment insurance law generally requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. But a claimant is not required to repay an overpayment when an initial decision to award benefits on an employment-separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

The claimant received benefits but has been denied benefits as a result of this decision. He, therefore, was overpaid \$248.00 in benefits. The issue of whether the claimant should be required to repay the overpayment and whether the employer should be charged is remanded to the agency.

**DECISION:**

The unemployment insurance decision dated November 27, 2013, reference 01, is reversed. The claimant is ineligible for benefits effective November 3, 2013. He was overpaid \$248.00 in benefits. The issue of whether the claimant should be required to repay the overpayment and whether the employer should be charged is remanded to the agency.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/css