

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

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**Appeal Number: 04O-UI-10590-DWT
OC: 03/21/04 R: 01
Claimant: Respondent (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4-3 – Ability to and Availability for Work

STATEMENT OF THE CASE:

City of Carroll (employer) appealed a representative's April 6, 2004 decision (reference 01) that concluded Lydia S. Balk (claimant) was eligible to receive unemployment insurance benefits even though she was still employed part time or on-call because she was able to and available for work. A hearing was held in this matter before another administrative law judge on August 13, 2004. The employer participated in the hearing, but the claimant did not. On August 27, 2004, an administrative law judge issued a decision that held the claimant was not eligible to receive benefits and that she had been overpaid.

The claimant appealed this decision to the Employment Appeal Board. The Employment Appeal Board remanded this matter to the Appeals Section for a new hearing because the claimant had not received notice about the August 13 hearing.

After hearing notices were again mailed to the parties' last-known addresses of record, a telephone hearing was held on October 20, 2004. The claimant participated in the hearing with her attorney, Arthur Neu. Jeff Caylor, the chief of police, Laurie Schaeffer, and Cindy Forgy, the communications director, appeared on the employer's behalf. Claimant's Exhibit A, a copy of the claimant's time records for the weeks ending August 15, 2002 through July 30, 2004, were admitted as 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:

Has the employer placed the claimant on a reduced workweek?

Is the claimant able to and available for work?

FINDINGS OF FACT:

The claimant started working for the employer on August 12, 2002. The employer hired the claimant to work as a part-time relief person who would cover for other employees when they were on vacation. The employer knew the claimant planned to attend school and did not anticipate any scheduling problems while she went to school. The claimant started her schooling on December 28, 2002. The Department approved the schooling the claimant received. The claimant finished her schooling on May 8, 2004.

The claimant initially established a claim for unemployment insurance benefits during the week of March 23, 2003. She received benefits during this benefit year. The claimant established a subsequent benefit year during the week of March 21, 2004. The employer is the only base period employer during this current benefit year.

The claimant's base period for her current claim is October 1, 2002 through September 30, 2003. During this benefit year she averaged 43 hours every two weeks from April 1, 2003 through September 30, 2003. (This biweekly average does not include the first two months the claimant was in training.) From October 1, 2003, through July 30, 2004, the claimant has averaged 19 hours of work every two weeks. Since July 30, 2004, the claimant has not done any work for the employer.

REASONING AND CONCLUSIONS OF LAW:

When 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, the claimant cannot be considered partially unemployed. 871 IAC 24.23(26). This means if a claimant worked 20 hours a week during her base period and continues to work 20 hours a week, she is not eligible to receive partial unemployment insurance benefits because she is working as many hours as she worked during her base period. The facts in this case indicate the claimant worked on an average twice as many hours during her base period as she has worked since October 1, 2003. The evidence shows the claimant is working a reduced workweek. Therefore, she is eligible to receive partial unemployment insurance benefits. The employer has effectively placed the claimant on a layoff status by not calling her to work. 871 IAC 24.1(113).

Since the claimant attended Department approved training until May 8, 2004, the employer's account will not be charged for any benefits the claimant received prior to May 9, 2004. Iowa

Code §96.4-6(a). An employer's account can be relieved from charge if a claimant has been discharged for work-connected misconduct or she quits without good cause attributable to the employer. Iowa Code §96.7-2(a), 871 IAC 23.43(4).

DECISION:

The representative's April 6, 2004 decision (reference 01) is affirmed. The claimant is eligible to receive unemployment insurance benefits as of March 21, 2004. Since the employer reduced the hours she had worked in her base period by about 50 percent, the employer's account is subject to charged as of May 9, 2004. The employer's account will not be charged for benefits the claimant received prior to May 8, 2004, because the claimant was enrolled in Department approved training.

dlw/b