

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BEVERLY FLIPPO

Claimant

APPEAL NO. 11O-UI-07240-WT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PER MAR SECURITY & RESEARCH CORP

Employer

OC: 3/14/10

Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Employer filed an appeal from a fact-finding decision dated February 28, 2011, reference 04, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 29, 2011. Claimant did not participate because there was a block on her phone. The employer participated. The decision was modified in favor of the employer. Claimant appealed and argued that she was not given an opportunity to participate in the hearing. On May 31, 2011, the Employment Appeal Board agreed with claimant and remanded the matter to the Appeals Section. The matter was set for a new hearing on July 18, 2011. Claimant participated personally. Employer participated through Operations Manager, Michael McElmeel. Incorrect issues were listed on the hearing notice. The parties waived the notice requirement at the beginning of the hearing so that the undersigned administrative law judge could consider all relevant issues at this time.

ISSUES:

The issues are whether claimant is still employed at the same hours and wages, whether the claimant is partially unemployed, or whether the claimant is able and available for work. An additional issue is whether there is any basis to relieve the employer of any benefit charges.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds as follows. Claimant began working for the employer as a full-time security officer in April 2009. In approximately January 2011, the employer lost an account with the Blackhawk County Courthouse. At that time, claimant's hours were changed and reduced significantly. Claimant was still offered limited part-time hours with another account.

Claimant filed an additional claim in January 2011, after the Blackhawk County account was lost. Prior to January 16, 2011, claimant's hours had varied, but the Blackhawk County job had allowed her full-time hours. In approximately February 2011, the employer offered her work in Cedar Rapids which she refused. Since she filed for benefits her hours have been reduced substantially.

REASONING AND CONCLUSIONS OF LAW:

"For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work and earnestly and actively seeking work." 871 IAC 24.22(2)(j).

Iowa Code section 96.19-38 provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

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.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

In this case, the weight of the evidence demonstrates that the claimant became partially unemployed in January 2011. Based upon the evidence in the record obtained at hearing, the claimant is able and available for work at all relevant times and there is no basis to relieve the employer of charges.

DECISION:

The fact-finding decision dated February 28, 2011, reference 04, is affirmed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Joseph L. Walsh
Administrative Law Judge

Decision Dated and Mailed

jlw/css