

**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**

**LINDA L JORDAN  
100 W UNION ST  
IONIA IA 50645**

**PLANTPEDDLER INC  
530 – 2<sup>ND</sup> AVE SW  
CRESCO IA 52136**

**STEVE NORBY  
IOWA LEGAL AID  
607 SYCAMORE ST STE 708  
WATERLOO IA 50703**

**Appeal Number: 05A-UI-08766-S2T  
OC: 07/17/05 R: 03  
Claimant: Respondent (2)**

**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, 4<sup>th</sup> 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 is 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Plantpeddler (employer) appealed a representative's August 18, 2005 decision (reference 01) that concluded Linda Jordan (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 September 12, 2005. The claimant was represented by Steve Norby, Attorney at Law, and participated personally. The employer participated by Rachel Gooder, Vice President; Mandy Whalen, Assistant Manager; and Connie Goodman, Product Manager. The claimant offered one exhibit which was marked for identification as Exhibit A. Exhibit A was received into evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on April 30, 2005, as a part-time laborer. The employer and claimant agreed at the time the claimant was hired she would work three to five hours per week on average for the year. The claimant understood her hours would increase in the spring and decrease in the summer. The claimant's hours decreased in the summer and she filed for unemployment insurance benefits with an effective date of July 17, 2005. She still works for the employer approximately one hour per week.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is still employed at the same hours and wages as her original contract for hire. For the following reasons the administrative law judge concludes she is.

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. She is still employed in a part-time position as was agreed to at the time she was hired. The claimant is not considered unemployed. She is disqualified for being unavailable 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 in the amount of \$729.00 since filing her claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

DECISION:

The representative's August 18, 2005 decision (reference 01) is reversed. The claimant is not considered partially unemployed. She is disqualified for being unavailable for work. The claimant is overpaid benefits in the amount of \$729.00.

bas/kjw