

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

JENNIFER L WAGNER  
775 NE 64<sup>TH</sup> ST  
PLEASANT HILL IA 50327

COURTYARD ESTATES INC  
208 - 35<sup>TH</sup> ST DR SE #500  
CEDAR RAPIDS IA 52403-1361

Appeal Number: 06A-UI-06948-SWT  
OC: 06/04/06 R: 02  
Claimant: Appellant (4)

**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 to and Available for Work  
871 IAC 24.1(113)a - Layoff

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated June 30, 2006, reference 01, that concluded she was unavailable for work. A telephone hearing was held on July 25, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing. Pat Hanson participated in the hearing on behalf of the employer with a witness, Pauli Smith.

FINDINGS OF FACT:

The claimant worked part time as a dietary aid for the employer starting November 7, 2005. She normally worked three hours per day, three to five days per week at a rate of pay of \$7.00 per hour.

In May 2006, the claimant informed the employer that she was going to be starting a new full-time job on June 1, 2006. She indicated that she wanted to continue working for the employer and notified the employer about the dates she was available to work.

The employer placed the claimant on the schedule for the following days in June based on her requested schedule: June 9, 10, 14, 15, 21 and 22. The claimant ended up not starting her new job until June 26, 2006. When she asked the scheduler for the employer whether additional hours were available, she was told that the hours were all filled. The claimant was called in for a meeting for her full-time job on June 9, and she informed the employer that she could not work that day. She worked as scheduled on June 14 and 15. The employer removed the claimant from the schedule on June 21 and 22 and gave her hours to employees that the employer considered more reliable.

The claimant filed a new claim for unemployment insurance benefits with an effective date of June 4, 2006. Her weekly benefit amount was determined to be \$71.00. The claimant reported \$51.00 in wages on her claim for the week ending June 10, 2006, and was paid \$37.00 in benefits. She reported wages of \$80.00 on her claim for the week ending June 17, 2006, and was paid \$8.00 in benefits. She reported no wages on her claim for the week ending June 24, 2006, and was paid \$71.00 in benefits. The claimant stopped filing at that point, because she started her full-time job the next week.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is able to work and available for work as required by the unemployment insurance law in Iowa Code section 96.4-3.

The claimant is not eligible for partial unemployment insurance benefits for the weeks ending June 10 and 17. The employer had her scheduled for each day she said she could work. The claimant did not work all of her scheduled hours during the week ending June 10. The employer cannot be faulted for not giving the claimant additional hours after she found out her start date on her new job was going to be delayed. Partial unemployment insurance benefits are limited to situations where a claimant's hours are reduced by the employer. See Iowa Code section 96.19-38-b.

The claimant, however, was laid off during week ending June 24, 2006, because she was removed from the schedule and her hours were given to someone else. See 871 IAC 24.1(113)a, which defines a layoff as a suspension from pay status initiated by the employer without prejudice to the worker. The claimant was available to work during the week ending June 24, 2006, but the employer took her off the schedule. She is eligible for benefits for that week.

#### DECISION:

The unemployment insurance decision dated June 30, 2006, reference 01, is modified in favor of the claimant. The claimant is not eligible for unemployment insurance benefits for the weeks ending June 10 and 17, 2006. She is eligible for unemployment insurance benefits for the week ending June 24, 2006.

saw/kjw