

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTINA PUTNAM

Claimant

APPEAL NO: 14A-UI-00675-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EASTERN IOWA PHYSICAL THERAPY PC

Employer

OC: 12/01/13

Claimant: Respondent (2)

Iowa Code § 96.4-3 - Able and Available for Work

Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Eastern Iowa Physical Therapy, PC (employer) appealed an unemployment insurance decision dated January 10, 2014, reference 01, which held that Christina Putnam (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 11, 2014. The claimant participated in the hearing. The employer participated through Patricia Dessner, Human Resources Specialist. Employer's Exhibits One and Two and Claimant's Exhibit A were admitted into evidence.

ISSUE:

The issue is whether the claimant is working the same hours and wages as in her original contract of hire with this employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired as a part-time office manager in November 2007. The employer has four separate clinics in Durant, Blue Grass, Wilton and West Branch. The claimant is the office manager in Durant but worked at all four clinics. She worked full time in Blue Grass from January 2013, through July 2013, when she was removed for disciplinary reasons.

However, even after leaving Blue Grass, the claimant continued to work full-time hours until November 18, 2013, when she voluntarily reduced her availability to three days a week. She sent the employer an email on October 24, 2013, stating that she could only work Mondays, Wednesdays, and Fridays in the Durant office. The employer advised the claimant in an email on that same day that she would not be guaranteed hours since the Durant clinic was not consistently busy. The employer estimated the claimant could work as few as 15 hours up to 25 to 30 hours. The employer requested the claimant take some time to think about it. The claimant sent an email on October 29, 2013, confirming her reduced availability. She has

subsequently increased her availability but has not provided a definitive list of exactly when and where she is willing to work.

The claimant filed a claim for unemployment insurance benefits effective December 1, 2013, and has received benefits after the separation from employment in the amount of \$1,461.00.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant is still employed with the employer for the same hours and wages as contemplated in the original contract of hire.

Iowa Code § 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

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 has the burden of proof in establishing her ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). The claimant was hired as a part-time office manager and she continues to work in that same capacity. Her hours have been reduced, but they were voluntarily reduced. Consequently, the claimant does not meet the availability requirements of the law.

Iowa Code § 96.3-7 provides in pertinent part:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. . . .

DECISION:

The unemployment insurance decision dated January 10, 2014, reference 01, is reversed. The claimant does not qualify for benefits. She is overpaid benefits in the amount of \$1,461.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css