

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SUADA BACEVAC**

Claimant

**APPEAL NO: 12A-UI-01548-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TARGET CORPORATION**

Employer

**OC: 12/25/11**

**Claimant: Appellant (1)**

Section 96.19-38-b – Eligibility for Partial Unemployment Insurance Benefits  
Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Suada Bacevac (claimant) appealed a representative's February 6, 2012 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits in conjunction with her employment with Target Corporation (employer). Hearing notices were mailed to the parties' last-known addresses of record for a telephone hearing to be held at 9:00 a.m. on March 20, 2012. The claimant failed to respond to the hearing notice and provide a telephone number at which she could be reached for the hearing and did not participate in the hearing. The employer responded to the hearing notice and indicated that Amy Mosely would participate as the employer's representative. When the administrative law judge contacted the employer for the hearing, Ms. Mosely agreed that the administrative law judge should make a determination based upon a review of the available information, including her informal statement. Based on a review of the available information and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant employed by the employer for less than her usual hours and wages even though she remained able and available for work, and was she therefore eligible for full or partial unemployment insurance benefits?

**FINDINGS OF FACT:**

The claimant started working for the employer on October 10, 2008. She works full time as a packer at the employer's Cedar Falls, Iowa warehouse/distribution center on a schedule of Sunday, Monday, and Saturday, from 6:00 a.m. to 6:00 p.m. She remains in that employment. During the dates in question her base hourly rate was \$14.72, for which she received an additional \$1.00 shift differential for hours actually worked.

The claimant also has full-time employment at another employer, Bertch Cabinet Manufacturing, Inc. The claimant was laid off from Bertch for some week over the 2011 winter holidays. In the claimant's appeal letter, she asserted that she was laid off and applied for benefits "through Sunday December 25th, 2011." Unemployment insurance benefit weeks run from Sunday

through Saturday. Agency records indicate that no weekly claim was filed by the claimant for the benefit week ending Saturday, December 24, but rather that the only current week for which a weekly claim was filed was the week ending Saturday, December 31.

The claimant had established an unemployment insurance benefit year effective December 26, 2010. Her weekly benefit amount for that year was calculated to be \$426.00. She made weekly claims for four widely separated weeks during that claim year, which expired December 25, 2011, but no weekly claim was filed for the week ending Saturday, December 24. Upon the expiration of the 2010 claim year, the claimant established an additional claim year effective December 25, 2011, and as of the date of the hearing has filed only one weekly claim under that claim year, for the week ending December 31, 2011. Her weekly benefit amount for the current claim year was calculated to be \$436.00.

For the benefit week ending December 31, 2011, the claimant worked 22 hours on December 26 (12 hours) and December 31 (10 hours) at the \$15.72 rate. She also was paid \$14.72 for two hours of vacation on December 31, and for 12 hours of holiday pay on December 25. Therefore, her gross earnings from Target for the benefit week ending December 31 were \$551.92.

Had the claimant filed a weekly claim for the benefit week ending December 24, 2011, she had worked 14 hours on December 18 (6 hours) and December 24 (8 hours) at the \$15.72 rate. She had volunteered to leave six hours early on December 18, had requested to be off the full day (12 hours) on December 19, and had volunteered to leave four hours early on December 24. The employer had a full 12 hours of work available to the claimant each of those days had she made herself available to the employer to work those hours. Her gross earnings from Target for the potential benefit week ending December 24 were \$220.08.

#### **REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant is eligible for partial unemployment insurance benefits. The unemployment insurance law provides that a claimant is deemed partially unemployed if she has been permanently or temporarily separated from one employer and earns less than her weekly benefit amount plus \$15.00 in other employment. Iowa Code § 96.19-38-b; see also Iowa Code § 96.3-3.

If the claimant had other part-time employment during her base period and remains in that employment, she continues to be eligible for benefits as long as she is receiving the same employment from the part-time employer that she received during the base period. However, under those circumstances the part-time employer's account is relieved of benefit charges. 871 IAC 23.43(4)a. To be eligible for benefits for any particular week, the claimant must file a weekly claim for that week reporting her wages from all employers earned (not paid) for that week, including any vacation pay and holiday pay; the amount of her eligibility will then be determined pursuant to the formula set out by the statute. 871 IAC 24.52(8); Iowa Code § 96.3-3. While for the benefit week ending December 31 the claimant may not have been fully employed at her other full-time employment at Bertch, she had sufficient earnings from her employment at Target that week to render her ineligible for any partial unemployment benefits.

It is possible that the claimant had intended to claim unemployment insurance benefits for the week ending December 24, rather than for the week ending December 31. However, implicit with the concept of allowing benefits for a claimant who is working fewer hours is that the reduction bringing the earned wages low enough to qualify for partial benefits has been because

of the choice of the employer, not that the claimant is not able or willing to work the hours available to her. Rather, she must remain available for work on the same basis as when she was previously working. Iowa Code § 96.4-3; 871 IAC 22(2)(a). The reason the claimant's earnings for the week ending December 24, 2011 were below the \$441.00 partial eligibility level (for that claim year) was because she was not able and available to work the number of hours Target had available to her during that week, and she would thus be ineligible for unemployment insurance benefits for that period. 871 IAC 24.23(29).

**DECISION:**

The unemployment insurance decision dated February 6, 2012 (reference 01) is affirmed. The claimant is not eligible for partial unemployment insurance benefits for either of the weeks ending December 31 or the week ending December 24, 2011.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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