

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHELLE LANGE

Claimant

APPEAL NO. 06A-UI-10397-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

**OC: 09/03/06 R: 04
Claimant: Respondent (2)**

Section 96.4-3 - Able and Available for Work

Section 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. (employer) appealed an unemployment insurance decision dated October 12, 2006, reference 01, which held that Michelle Lange (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 November 8, 2006. The claimant participated in the hearing. The employer participated through Brenda McGowan, Assistant Manager and Jennifer Wollenburg, Customer Service Manager. Employer's Exhibit One was admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant meets the availability requirements of the law.

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 cashier on August 19, 2004. She requested to work full-time on May 15, 2006 and was approved for that on the following day. On July 18, 2006, the claimant requested to return to part-time because she is attending school. She is not available to work any hours on Mondays, Thursdays and Fridays and can only work after 3:00 p.m. on Tuesdays and Wednesdays. She is available to work from 10:00 a.m. to 9:00 p.m. on Saturdays and Sundays. The employer has over 400 employees and employee schedules are now generated by computer. Employees are scheduled according to their availability statements. Additional hours are available for the claimant but she has restricted her availability due to school.

The claimant filed a claim for unemployment insurance benefits effective September 3, 2006 and has received benefits after the separation from employment.

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 section 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(16) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

The claimant was hired part-time but went full-time on May 16, 2006. Because she started school, she requested to go part-time again on July 18, 2006. The claimant's hours have been reduced per her own request and she has additionally limited her availability to work. Benefits are denied accordingly.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated October 12, 2006, reference 01, is reversed. The claimant does not meet the availability requirements of the law and is not eligible to receive unemployment insurance benefits. The claimant is overpaid benefits in the amount of \$101.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/cs