

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHELLE J GROSVENOR**  
Claimant

**APPEAL NO. 11A-UI-01218-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**OC: 11/28/10**  
**Claimant: Respondent (2-R)**

Section 96.4-3 - Able to and Available for Work  
Section 96.19-38-b - Eligibility for Partial Unemployment Insurance Benefits  
Section 96.3-7 - Overpayment of Benefits

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated January 20, 2011, reference 01, that concluded the claimant was eligible to receive partial unemployment insurance benefits and the employer's account was chargeable for benefits. A telephone hearing was held on March 1, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Susan Schneider, attorney at law, participated in the hearing on behalf of the employer with witnesses, Donnetta Ware and Sheila Moore. Exhibits One through Three were admitted into evidence at the hearing.

**ISSUES:**

Is the claimant eligible for partial unemployment insurance benefits?

Was the claimant overpaid unemployment insurance benefits?

**FINDINGS OF FACT:**

The claimant has worked for the employer as a certified nursing assistant since August 19, 2009. She was classified as full time, which the employer defines as working over 30 hours per week.

The claimant's hours vary from week to week and are determined by a two-week work schedule, but she has worked an average of 35 hours per week. She is normally scheduled for eight days per pay-period for the employer. Her starting rate of pay was \$9.80 per hour, but she received a raise to \$10.30 per hour.

The claimant filed a new claim for unemployment insurance benefits with an effective date of November 28, 2010. Her weekly benefit amount was determined to be \$249.00. Her unemployment earnings limit is \$264.00. Since applying for unemployment compensation, the claimant has filed claims for unemployment insurance benefits for the weeks ending:

December 4, December 11, December 18, December 25, January 1, January 8, January 15, and January 22.

The only weeks when the claimant reported earnings of less than her earnings allowance were the weeks ending December 18 when she reported \$160.00 in wages and the week ending January 22 when she reported \$242.00. For the week ending December 18, she was scheduled for three days for which she was paid \$247.00, but she was still scheduled for eight days of work during the two-week pay period so there was no reduction in her hours. For the week ending January 22, she was scheduled for three days for which she was paid \$242.00, but she was still scheduled for eight days of work during the two-week pay period so there was no reduction in her hours.

The claimant received \$151.00 in unemployment insurance benefits for the week ending December 18, 2010.

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

The issue in this case is whether the claimant was eligible for partial unemployment insurance benefits effective November 28, 2010.

Iowa Code § 96.3-3 provides:

3. Partial unemployment. An individual who is partially unemployed in any week as defined in section 96.19, subsection 38, paragraph "b", and who meets the conditions of eligibility for benefits shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. The benefits shall be rounded to the lower multiple of one dollar.

Iowa Code § 96.19-38-b provides in part:

- b. An individual shall be deemed partially unemployed in any week in which, while employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

Although the claimant earned less than her earnings limit for the weeks ending December 18 and January 22, there is no evidence that she worked less than that regular workweek due to a reduction in hours effective November 28, 2010, or afterward. The claimant cannot be determined eligible due to a scheduling pattern of five days in one week and three in the next, when the claimant consistently receives eight days of work in a pay period. She is still employed at the same hours and wages as her original contract of hire and is not eligible for unemployment insurance benefits.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the

overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

**DECISION:**

The unemployment insurance decision dated January 20, 2011, reference 01, is reversed. the claimant is not eligible for unemployment insurance benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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