

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SANDRA E DORN GATES

Claimant

APPEAL NO. 08A-UI-04036-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FLYING J INC

Employer

**OC: 03/16/08 R: 03
Claimant: Respondent (2)**

Section 96.4-3 – Able and Available

Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Flying J (employer) appealed a representative's April 17, 2008 decision (reference 01) that concluded Sandra Dorn Gates (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 12, 2008. The claimant participated personally. The employer participated by Gail Anderson, General Manager, and Lori Smith Kitchen Manager.

ISSUE:

The issue is whether the claimant is disqualified for being unavailable for work.

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 in the fall of 1998, as a full-time cashier. In January 2008, the claimant, for personal reasons, asked that her hours be reduced to approximately six hours per day, five days per week. The employer complied with the claimant's request and the employer thought of the claimant as a part-time worker. The employer scheduled the claimant 28 to 32 hours per week.

The claimant called in absent on March 13, 14, 28, April 4, 19 and 22, 2008. Her weekly hours were reduced due to her requested absence.

REASONING AND CONCLUSIONS OF LAW:

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 requested a change in status and became a part-time worker. She is still working part-time for the employer. She asked that her hours be reduced for personal reasons and the employer complied. The hours were further reduced when the claimant called in six absences. The change in hours was initiated by the claimant. She is still employed in a part-time position as was agreed to at the time she reduced her hours. The claimant is disqualified from receiving unemployment insurance benefits because she made herself unavailable for work.

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.

The claimant has received benefits since filing the claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

DECISION:

The representative's April 17, 2008 decision (reference 01) is reversed. The claimant is disqualified from receiving unemployment insurance benefits because she was not available for work. The claimant is overpaid benefits in the amount of \$381.00.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css