

**IOWA WORKFORCE DEVELOPMENT**  
**Unemployment Insurance Appeals Section**  
**1000 East Grand—Des Moines, Iowa 50319**  
**DECISION OF THE ADMINISTRATIVE LAW JUDGE**  
68-0157 (7-97) – 3091078 - EI

**KIM BENDICKSON**  
**1815 – 250<sup>TH</sup> ST**  
**GRAND JUNCTION IA 50107**

**BROOKER & COMPANY INC**  
**110 E STATE ST**  
**JEFFERSON IA 50129**

**Appeal Number: 04A-UI-08164-SWT**  
**OC: 06/13/04 R: 01**  
**Claimant: Respondent (2)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.***

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**STATE CLEARLY**

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.4-3 - Able to and Available for Work  
871 IAC 24.23(26) - Eligibility for Partial Unemployment Insurance Benefits  
Section 96.3-7 - Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated July 19, 2004, reference 01, that concluded the claimant was eligible for unemployment insurance benefits because she was employed part time and was working whenever work was available. A telephone hearing was held on August 19, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing. Leo Brooker participated in the hearing on behalf of the employer with a witness, Amanda Brinks. Exhibits One and A were admitted into evidence at the hearing.

#### FINDINGS OF FACT:

The employer is an accounting firm whose amount of business fluctuates with the tax season, which is from October 1 through April 30. The claimant's last period of employment with the employer started on September 16, 2002. When the claimant was hired, she was offered and accepted a position as secretary at a hourly rate of pay of \$10.00 per hour for 40 hours of work per week plus some overtime during the tax season and 18 hours of work per week (three six-hour days) during the period from May 1 through September 30.

The claimant requested to work more hours during the off-season and believes that she could work more hours based on her job duties. The owner of the business, Leo Brooker, told the claimant that he would try to provide her with more hours but has only had the claimant working the three days per week as contemplated in the original contract of hire. Brooker has not promised the claimant any additional hours or days of work during the off-season. The verbal contract agreed to between the parties at the time of hire has not been modified.

The claimant filed a new claim for unemployment insurance benefits with an effective date of June 13, 2004. The claimant filed for and received a total of \$1,080.00 in unemployment insurance benefits for the weeks between June 13 and August 14, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is able to work and available for work as defined by the unemployment insurance law. Iowa Code Section 96.4-3.

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 evidence in this case establishes the claimant was employed at the same hours and wages contemplated in the original contract of hire. She was not working a reduced workweek different than that originally agreed to by the parties. The employer told the claimant that he would try to get her additional hours but never guaranteed or promised the claimant any additional hours or days of work during the off-season. Based on 871 IAC 24.23(26), the claimant is not eligible for partial unemployment insurance benefits.

The next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

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.

As a result of this decision, the claimant is ineligible to receive unemployment insurance benefits effective June 13, 2004 and was overpaid \$1,080.00 in unemployment insurance benefits for the weeks between June 13 and August 14, 2004.

**DECISION:**

The unemployment insurance decision dated July 19, 2004, reference 01, is reversed. The claimant is ineligible to receive unemployment insurance benefits effective June 13, 2004. The claimant was overpaid \$1,080.00 in unemployment insurance benefits, which must be repaid.

saw/tjc