

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATTHEW S NELSON
Claimant

APPEAL NO. 07A-UI-03258-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TARGET CORPORATION
Employer

OC: 02/04/07 R: 03
Claimant: Respondent (2)

Section 96.4(3) – Able and Available
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Target Corporation (employer) appealed a representative's March 20, 2007 decision (reference 01) that concluded Matthew Nelsen (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 held on April 13, 2007. The claimant participated personally. The employer was represented by David Williams, Assistant Manager of Appellate Services, and participated by Teresa Feldmann, Human Resources Representative, and Damon Hall, Production Controller.

ISSUE:

The issue is whether the claimant is eligible to receive unemployment insurance benefits.

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 on February 17, 2003, as a full-time warehouse worker. The Voluntary Leave Early (VLE) is a program the employer offers which allows an employee to volunteer to reduce his hours so the employer may become more productive. The employee can record the number of hours he wishes not to work for a particular week on a clipboard in his department and the employer will reduce his 36 normally scheduled hours by the number of hours the employee has requested not to work. The employer reviews the requests and grants VLE as productivity demands.

At times the employer schedules down when there is not sufficient work for employees. Since May of 2005, the employer has scheduled down once. The scheduling down occurred for the week ending February 24, 2007. During that week all employees, including the claimant, had their hours reduced by four.

The claimant filed for unemployment insurance benefits with an effective date of February 4, 2007. During the week of February 3, 10, March 10, 24, 31 and April 7, 2007, the claimant requested and was granted 36 hours of VLE. The claimant worked no hours even though hours were available. During the week ending February 17, 2007, the claimant worked 24 hours and took 12 hours of VLE. During the week ending February 24, 2007, the claimant worked

22 hours, took 10 hours of VLE and had a mandatory scheduling down of 4 hours. During the week ending March 3, 2007, the claimant worked 16 hours, took 12 hours off and took 8 hours of VLE. During the week ending March 17, 2007, the claimant worked 12 hours and took 24 hours of VLE.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant is not eligible to receive unemployment insurance benefits.

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.

When an employee is not willing to perform work during the hours that work is available he is considered to be unavailable for work. The claimant is not willing to make himself available for the regular hours of his work. The claimant is disqualified from receiving unemployment insurance benefits because he was not available 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 his claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

DECISION:

The representative's March 20, 2007 decision (reference 01) is reversed. The claimant was voluntarily unemployed and, therefore, not eligible to receive unemployment insurance benefits. The claimant is overpaid benefits in the amount of \$2,010.00.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css