

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUSAN H HOLUB
Claimant

APPEAL NO. 14A-UI-03063-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NORDSTROM INC
Employer

OC: 04/21/13
Claimant: Respondent (4-/R)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.4(3) – Still Employed Same Hours and Wages
Iowa Code Section 96.7(2) – Employer Liability

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 10, 2014, reference 01, decision that allowed benefits to the claimant effective February 9, 2014, provided she was otherwise eligible, based on an agency conclusion that she was able and available for work but partially unemployed. After due notice was issued, a hearing was held on April 14, 2014. Claimant Susan Holub did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Edward Wright of Equifax Workforce Solutions represented the employer and presented testimony through Ryan Eichhorn. Exhibits D-1, D-2 and D-3 were received into evidence.

ISSUES:

Whether the claimant has been able to work and available for work since establishing the additional claim for benefits that was effective February 9, 2014.

Whether the claimant was partially unemployed from Nordstrom since she established the additional claim for benefits that was effective February 9, 2014.

Whether the employer's account may be assessed for benefits paid to the claimant.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Susan Holub has been employed by Nordstrom, Inc., as a customer service specialist since 2004 and continues in the employment. Though the employer classifies the employment as full-time, the employer has not provided a 40-hour work week from some time. During most of 2013, Ms. Holub's regular work hours were 12:30 p.m. to 9:00 p.m., Sunday, Monday and Wednesday. During the holiday season, the employer added another shift to Ms. Holub's work schedule. During the holiday season, Ms. Holub worked 32 to 35 hours per week. The number of hours the employer had available to Ms. Holub dropped in late January 2014, after follow-up work related to the holiday season wound down.

Susan Holub established an additional claim for benefits that was effective February 9, 2014. The additional claim is based on an April 21, 2013 original claim. Her weekly benefit amount is set at \$322.00. Since Ms. Holub filed her additional claim, she has reported wages and received benefits as follows. The chart below also shows the unemployment insurance benefits paid to Ms. Holub, the number of hours she worked each week, and the actual wages she earned each week. The chart also shows the approximate number of hours Ms. Holub requested off during the week and the wages she surrendered as a result of those requests for time off. Ms. Holub's hourly wage prior to April 1, 2014 was \$16.05. The hourly wage went to \$16.45 effective April 1, 2014. Ms. Holub discontinued her claim after the week that ended April 5, 2014.

<u>Week end</u>	<u>Wages rptd</u>	<u>Benefits paid</u>	<u>Hours wkd</u>	<u>Act Wages</u>	<u>hrs/wages surrendered</u>
02/15/14	193.00	209.00	11.766	188.84	11 / 177
02/22/14	500.00	0.00	27.044	434.06	3.5 / 56
03/01/14	168.00	234.00	10.2	163.71	13 / 208
03/08/14	0.00	322.00	9.45	151.66	12.5 / 201
03/15/14	193.00	209.00	11.783	189.12	4.5 / 72
03/22/14	225.00	177.00	14.00	224.70	8 / 128
03/29/14	160.00	242.00	8.349	134.00	8 / 128
04/05/14	242.00	160.00	15.166	249.48	0 / 0
04/12/14	n/a	0.00	22.432	369.00	7 / 115.15

The chart below shows the total number of hours and wages that the employer had available for Ms. Holub during the weeks when the additional claim was active and the one week beyond discontinuation of the claim.

<u>Week end</u>	<u>hours available</u>	<u>Wages available</u>
02/15/14	22.766	365.84
02/22/14	30.544	490.00
03/01/14	23.2	371.11
03/08/14	21.95	352.66
03/15/14	16.783	261.12
03/22/14	22.00	352.70
03/29/14	16.349	262.00
04/05/14	15.166	249.48
04/12/14	29.432	484.15

Ms. Holub's base period consists of the four-quarters of 2012. Nordstrom, Inc., is Ms. Holub's sole base period employer. Ms. Holub's quarterly wages during the base period are as follows. During the first quarter of 2012, Ms. Holub's base period wages were \$6,859.77. During the second quarter of 2012, the wages were \$7,406.50. During the third quarter of 2012, the wages were 6,998.16. During the fourth quarter of 2012 the wages were \$7,410.28. The average weekly wage during the base period was \$551.43. The employer has provided additional quarter wage information to Workforce Development for 2013 as follows. During the first quarter 2013, Ms. Holub's wages were \$6438.12. During the second quarter of 2013, Ms. Holub's wages were \$3,826.92. During the third quarter 2013, Ms. Holub's wages were \$5,558.99. During the fourth quarter 2013, Ms. Holub's wages were \$3,551.00. Ms. Holub's average weekly wage during 2013 was \$372.60.

Since Ms. Holub established the additional claim for benefits, there have been several weeks when she did not work all the hours the employer had available for her.

During the week that ended February 15, 2014, Ms. Holub left an hour early on February 9, gave up a seven-hour shift on February 10, and gave up three hours on February 12.

During the week and ended February 22, Ms. Holub gave up 3 ½ hours of work on February 19.

During the week that ended March 1, Ms. Holub gave up 3 ½ hours on February 23, gave up a seven-hour shift on February 24, and gave up two and a half hours of work on February 26.

During the week that ended March 8, Ms. Holub gave up two hours on March 2, gave up 3 ½ hours on March 3, and gave up an entire seven-hour shift on March 5.

During the week that ended March 15, Ms. Holub gave up 4 ½ hours on March 9.

During the week that ended March 22, Ms. Holub gave up an hour of work on March 16 and gave up an entire seven-hour shift on March 19.

During the week that ended March 29, Ms. Holub gave up four and half hours of work on March 23 and gave up 3 ½ hours of work on March 24.

During the week that ended April 5, Ms. Holub performed all the work the employer had available for her.

REASONING AND CONCLUSIONS OF LAW:

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 24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required

to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

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. Iowa Code Section 96.19(38)(b).

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. 871 IAC 24.23(26). Contract for hire merely means the established conditions of the employment. See Wiese v. Iowa Dept. of Job Service, 389 N.W.2d 676, 679 (Iowa 1986).

Iowa Code section 96.7(1) and (2) provides, in relevant part, as follows:

Employer contributions and reimbursements.

1. Payment. Contributions accrue and are payable, in accordance with rules adopted by the department, on all taxable wages paid by an employer for insured work.

2. Contribution rates based on benefit experience.

a. (1) The department shall maintain a separate account for each employer and shall credit each employer's account with all contributions which the employer has paid or which have been paid on the employer's behalf.

(2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

[Emphasis added.]

During the week that ended February 15, 2014, Ms. Holub was not partially unemployed, was not available for work within the meaning of the law, and was not eligible for benefits. During that week Ms. Holub surrendered 11 hours of work. Had she performed all of the work the employer had for her, her weekly wages would have exceeded her weekly benefit amount by more than \$15.00.

During the week that ended February 22, Ms. Holub was not partially unemployed, was not available for work within the meaning of the law, and was not eligible for benefits. The employer had more than 30 hours of work available for her that week. The wages Ms. Holub reported and

the wages the employer had available for her exceeded her weekly benefit amount by more than \$15.00.

During the week that ended March 1, 2014, Ms. Holub was not partially unemployed, was not available for work within the meaning of the law, and was not eligible for benefits. During that week, Ms. Holub surrendered 13 hours of work. Had she performed all the work the employer had available, her weekly wages would have exceeded her weekly benefit amount by more than \$15.00.

During the week that ended March 8, 2014, Ms. Holub was not partially unemployed, was not available for work within the meaning of the law, and was not eligible for benefits. During that week, Ms. Holub surrendered 12.5 hours of work. Had Ms. Holub performed all of the work the employer had for her, her weekly wages would have exceeded her weekly benefit amount by more than \$15.00.

During the week that ended March 15, 2014, Ms. Holub met the definition of being partially unemployed, but did not meet the availability requirement and is not eligible for benefits. Ms. Holub surrendered 4.5 hours of work that the employer had for her. Had she performed all of the work the employer had for her, her weekly hours would have been about 17 and her weekly wages would have been about \$261.00.

During the week that ended March 22, 2014, Ms. Holub was not partially unemployed, was not available for work within the meaning of the law, and was not eligible for benefits. During that week, Ms. Holub surrendered eight hours of work the employer had for her. Had she performed all the work the employer had for her, her weekly wages would have exceeded her weekly benefit amount by more than \$15.00.

During the week that ended March 29, Ms. Holub was partially unemployed within the meaning of the law, but did not meet the availability requirement and was not eligible for benefits. Ms. Holub surrendered eight of hours. Had she performed all the work the employer had for her, her weekly wages would have been about \$262.00.

During the week that ended April 5, 2014, Ms. Holub was partially unemployed, was available for all the work the employer had for her and was eligible for benefits, provided she met all other eligibility requirements. The employer's account may be charged for those benefits.

This matter will be remanded for entry of an overpayment decision regarding the benefits Ms. Holub received for the period of February 9, 2014 through March 29, 2014.

DECISION:

The claims deputy's March 10, 2014, reference 01, decision is modified as follows:

During the weeks that ended February 15, February 22, March 1, March 8, and March 22, 2014, the claimant was not partially unemployed, was not available for work within the meaning of the law, and was not eligible for benefits.

During the weeks that ended March 15 and March 29, 2014, the claimant was partially unemployed, but did not meet the availability requirement and was not eligible for benefits.

During the week that ended April 5, 2014, the claimant was partially unemployed, was available for work, and was eligible for benefits, provided she met all other eligibility requirements. The employer's account may be charged for those benefits.

This matter is remanded for entry of an overpayment decision regarding the benefits paid to the claimant for the period of February 9, 2014 through March 29, 2014.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs