

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

AMY R GARNER
106 – 130TH ST
WEST BEND IA 50597

CASEY'S MARKETING CO
C/O TALX UC EXPRESS
3455 MILL RUN DR
HILLIARD OH 43026

Appeal Number: 06A-UI-00446-DWT
OC: 11/20/05 R: 02
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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4-3 – Able to and Available for Work
Section 96.19(38)(b) – Partial Unemployed Definition
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Casey's Marketing Company (employer) appealed a representative's January 3, 2006 decision (reference 01) that concluded Amy R. Garner (claimant) was eligible to receive partial benefits because even though she was working part time she was still available to work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 30, 2006. The claimant participated in the hearing. Pat Simmons, the general manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant working part time for the employer?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer in October 2004. The claimant works full time for the employer. In September 2005, the claimant started working a part time job at Country Maid, Inc. During the week of November 20, 2005, Country Maid placed the claimant on a one-week layoff because of lack of work. The claimant established a claim for benefits during the week of November 20, 2005. The employer did not lay off the claimant. Instead, the employer scheduled the claimant to work 37 hours, but the claimant only worked 28.75 hours the week ending November 26, 2005. The claimant filed a claim for unemployment insurance benefits for the week ending November 26, 2005. The claimant did not report any wages she earned from the employer during this week.

The claimant returned to work for Country Maid the week of November 27, 2005. Country Maid laid off the claimant again during the weeks ending December 24 and 31, 2005. The employer, however, scheduled the claimant to work full-time hours these weeks. The claimant filed claims for the weeks ending December 24 and 31. The claimant did not report the wages she earned these weeks. The claimant received a total of \$765.00 in benefits for the weeks ending November 26, December 24 and 31, 2005.

REASONING AND CONCLUSIONS OF LAW:

When 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 a reduced workweek, the claimant is not considered partially unemployed. 871 IAC 24.23(26). In this case, however, the claimant works full time for the employer.

An individual is 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 earns less than the weekly benefits amount plus \$15.00. Iowa Code §96.38(19)(b).

Even though the claimant was on a temporary layoff from a part-time job, the claimant still worked full-time for the employer. As a result, the claimant is not unemployed and is not eligible to receive benefits as of November 20, 2005.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code §96.3-7. The claimant is not legally entitled to receive benefits during the weeks ending November 26, December 24 and 31, 2005. The claimant has been overpaid a total of \$765.00 in benefits.

DECISION:

The representative's January 3, 2006 decision (reference 01) is reversed. During the week of November 20, the claimant was still working full-time for the employer. Therefore, she is not unemployed and is not eligible to receive benefits for the weeks ending November 26, December 24 or 31, 2005. The claimant has been overpaid and must repay \$765.00 in benefits she received for these weeks.

dlw/pjs