

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARY BEEK
Claimant

APPEAL NO: 13A-UI-00573-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**MATADI INC
DAYS INN MOTEL**
Employer

**OC: 12/23/12
Claimant: Respondent (2/R)**

Iowa Code § 96.4-3 - Able and Available for Work
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Days Inn Motel (employer) appealed an unemployment insurance decision dated January 15, 2013, reference 01, which held that Mary Beek (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 19, 2013. The claimant participated in the hearing. The employer participated through Kristie Peter, Manager. 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.

ISSUE:

The issue is whether the claimant is working the same hours and wages as in her original contract of hire with this employer.

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 part-time in housekeeping on October 28, 2011 with no guarantee of hours and continues to be employed in that same capacity. Her hours vary based upon the season and the employer's needs. She is paid on a bi-monthly basis but reported no wages for the five-week period ending January 26, 2013.

The claimant was paid \$291.81 on January 7, 2013 for 40.25 hours she worked from December 16, 2012 through December 31, 2012. She received two checks on January 22, 2013. One check was in the amount of \$303.55 for 31 regular hours and 7.25 holiday hours for the pay period ending January 15, 2013. However, the claimant also worked at the employer's other hotel during this pay period and received a second check for \$183.42. She worked 33.50 hours during the pay period from January 16, 2013 through January 31, 2013 and was paid on February 7, 2013 in the amount of \$242.87.

The claimant testified she filed for benefits because she was laid off from Kraft although she had no wages from Kraft. She later admitted she worked as a temporary employee for Kraft through Kelly Services.

The claimant filed a claim for unemployment insurance benefits effective December 23, 2012 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant is still employed with the employer for the same hours and wages as contemplated in the original contract of hire.

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 24.23(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.

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). The claimant was hired part-time and continues to work in that same capacity. Benefits are therefore denied.

Iowa Code § 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to

award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

An issue as to whether the claimant reported income from the employer arose as a result of the hearing. This issue was not included in the notice of hearing for this case, and the case will be remanded to Quality Control for an investigation and determination as to whether the claimant had earned but unreported wages. 871 IAC 26.14(5).

DECISION:

The unemployment insurance decision dated January 15, 2013, reference 01, is reversed. The claimant continues to be employed part-time in the same hours and wages as contemplated in the original agreement of hire. Partial unemployment insurance benefits are denied as of December 23, 2012. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue and for a review and determination on the unreported wage issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs