

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

SANDRA L FLUGGE
664 - 10TH ST NE
MASON CITY IA 50401-2359

CITY OF MASON CITY
ATTN DIRECTOR/HUMAN RESOURCES
10 – 1ST ST NW
MASON CITY IA 50401

Appeal Number: 06A-UI-04671-RT
OC: 04/02/06 R: 02
Claimant: Respondent (4)

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 96.5-1 – Voluntary Quitting
Section 96.4-3 – Required Findings (Able and Available for Work)
Section 96.7-2-a-2 – Employer Contributions and Reimbursements (Different Employment - Benefits Charged)
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, City of Mason City, filed a timely appeal from an unemployment insurance decision dated April 28, 2006, reference 01, allowing unemployment insurance benefits to the claimant. The employer primarily appealed because subsequent to that decision the claimant had permanently separated from the employer. After due notice was issued, a telephone hearing was held on May 17, 2006, with the claimant participating. Brian Carrott, Human Resources Manager, and Barbara Wood, Safety Director and Pretreatment Coordinator,

participated in the hearing for the employer. Employer's Exhibit One was admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibit One, the administrative law judge finds: The claimant was employed by the employer as a part-time safety assistant from April 23, 2002, until she voluntarily quit effective May 1, 2006. The claimant had also been previously employed by the employer. On April 28, 2006, the claimant delivered a letter of resignation to Barbara Wood, Safety Director and Pretreatment Coordinator, and one of the employer's witnesses, which resignation letter appears at Employer's Exhibit One. The claimant also mailed the same letter to Brian Carrott, Human Resources Manager, on April 29, 2006. The claimant's resignation letter is effective May 1, 2006. The claimant quit because she had obtained employment with a new employer, City Financial, which paid her more money and offered more hours. The claimant had this job in hand when she offered her written resignation. Her written resignation was accepted by the employer.

Prior to March 22, 2006, the claimant averaged approximately 24 hours per week. However, beginning March 22, 2006, the claimant's hours were substantially reduced by the employer to 12 hours per week. The claimant's hours were reduced because of budget constraints. The employer did not have enough work for the claimant to average the hours she had been averaging. Thereafter the claimant only averaged 12 hours per week. The claimant filed for unemployment insurance benefits effective April 2, 2006. Thereafter, the claimant had placed no physical restrictions or training restrictions on her ability to work nor had she placed any time, day, or location restrictions on her availability for work. The claimant was seeking work but not necessarily making two in-person job contacts each week. The employer is not contesting unemployment insurance benefits paid to the claimant from the effective date of her claim, April 2, 2006 to May 1, 2006. Pursuant to her claim for unemployment insurance benefits filed effective April 2, 2006, the claimant has received unemployment insurance benefits in the amount of \$520.00 as follows: \$119.00 per week for the benefit week ending April 8, 2006 (earnings \$131.00); \$163.00 for the benefit week ending April 15, 2006 (earnings \$87.00); and \$119.00 per week for two weeks, for the benefit weeks ending April 22, 2006 and April 29, 2006 (earnings \$131.00 each week). Thereafter the claimant has made no weekly claims and has received no additional unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was not, but any unemployment insurance benefits to which the claimant is entitled on and after May 1, 2006, shall not be charged to the account of the employer herein because the claimant left her employment voluntarily in good faith and for the sole purpose of accepting other or better employment which she did accept and for which she performed services.
2. Whether the claimant is ineligible to receive unemployment insurance benefits because, at relevant times, she is and was, not able, available, and earnestly and actively seeking work. The claimant is not ineligible to receive unemployment insurance benefits from April 2, 2006 to May 1, 2006.

3. Whether the claimant is receiving the same employment as she did during her base period and therefore the employer should not be charged for any unemployment insurance benefits which the claimant is entitled. From April 2, 2006 to May 1, 2006, the claimant was not receiving the same employment as she did during her base period and therefore, any unemployment insurance benefits to which the claimant is entitled shall be charged to the account of the employer herein.

4. Whether the claimant is overpaid unemployment insurance benefits. She is not.

Iowa Code section 96.5-1-a provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The parties agree, and the administrative law judge concludes, that the claimant left her employment voluntarily effective May 1, 2006. Her resignation letter to that effect appears at Employer's Exhibit One. The issue then becomes whether the claimant left her employment without good cause attributable to the employer. The administrative law judge concludes that the claimant has the burden to prove that she left her employment with the employer herein with good cause attributable to the employer or is otherwise entitled to receive unemployment insurance benefits. See Iowa Code section 96.6-2. The administrative law judge concludes that although the claimant has failed to meet her burden of proof to demonstrate by a preponderance of the evidence that she left her employment with the employer herein with good cause attributable to the employer, the claimant has met her burden of proof to demonstrate by a preponderance of the evidence that she is otherwise entitled to receive unemployment insurance benefits. The claimant credibly testified, and there was no testimony to the contrary, that she left her employment with the employer herein in good faith for the sole purpose of accepting other or better employment which she did accept and for which she performed services. Accordingly, the claimant is not disqualified to receive unemployment insurance benefits. However, unemployment insurance benefits to which the claimant is entitled after May 1, 2006, relating to wage credits earned with the employer herein shall not be charged to the account of the employer herein but shall be charged to the unemployment compensation fund. Unemployment insurance benefits are allowed to the claimant, provided she is otherwise eligible, but any benefits to which the claimant is entitled after May 1, 2006 related to wage credits earned with the employer herein shall not be charged to the account of the employer herein but shall be charged to the unemployment compensation fund.

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".

The administrative law judge concludes that the claimant has the burden to prove that she is able, available, and earnestly and actively seeking work under Iowa Code section 96.4(3) or is otherwise excused. New Homestead v. Iowa Department of Job Service, 322 N.W.2d 269 (Iowa 1982). The administrative law judge concludes that the claimant has met her burden of proof to demonstrate by a preponderance of the evidence that at relevant times hereto, she is and was, able and available for work. The claimant so testified credibly and the employer's witnesses agreed. The claimant testified credibly that she was earnestly and actively seeking work from April 2, 2006, the effective date of her claim for benefits until she found other work on or about May 1, 2006. Although the claimant was not certain that she made two in-person job contacts each week, the administrative law judge further concludes that the claimant was partially unemployed as defined by Iowa Code section 96.19(38)(b) from April 2, 2006 through May 1, 2006. The claimant remained employed at her regular job but worked less than her regular workweek and earned less than her weekly benefit amount plus \$15.00. Accordingly, the administrative law judge would conclude that the claimant would be excused from the requirement that she be available to work and earnestly and actively seeking work. In summary, the administrative law judge concludes that the claimant is and was, at relevant times, from April 2, 2006 to May 1, 2006, able, available, and earnestly and actively seeking work and is not ineligible to receive unemployment insurance benefits. The administrative law judge further concludes that the claimant was, during that period of time, partially unemployed and would be excused from the provisions that require her to be available for work and earnestly and actively seeking work. Unemployment insurance benefits are allowed to the claimant from April 2, 2006 to May 1, 2006, provided she is otherwise entitled to such benefits.

Iowa Code section 96.7-2-a(2) provides:

2. Contribution rates based on benefit experience.

a. (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.

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.

An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

The administrative law judge concludes that the claimant was not receiving the same employment from the employer that she received during her base period. All the parties concede that the claimant's hours were substantially reduced to 12 hours per week beginning March 22, 2006. The evidence is also uncontested that prior to that time the claimant had been averaging at least 24 hours per week. Accordingly, the administrative law judge concludes that from April 2, 2006 through May 1, 2006, the claimant was in the employment of a base period employer at the time she was receiving unemployment insurance benefits and during that time she was not receiving the same employment including hours and wages as she did in her base period and therefore any benefits received by the claimant during that period of time should be charged to the account of the employer herein.

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 administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$520.00 since filing for such benefits effective April 2, 2006, to April 29, 2006. The administrative law judge further concludes that the claimant is entitled to these benefits and these benefits should be charged to the account of the employer herein.

DECISION:

The representative's decision of April 28, 2006, reference 01, is modified. The claimant, Sandra L. Flugge, is entitled to receive unemployment insurance benefits, from and after May 1, 2006, provided she is otherwise eligible, because, although she left her employment voluntarily without good cause attributable to the employer, she left her employment in good faith with the sole purpose of accepting other or better employment which she did accept and for which she performed services. Any unemployment insurance benefits received by the claimant from and after May 1, 2006, should not be charged to the account of the employer herein but should be charged to the unemployment compensation fund. The claimant is also entitled to receive unemployment insurance benefits from April 2, 2006 to April 29, 2006 because she was able, available, and earnestly and actively seeking work but was receiving fewer hours than she had been receiving. Any unemployment insurance benefits paid to the claimant during this period of time should be charged to the account of the employer herein because the claimant was not receiving the same employment from the employer herein during this period of time that she received during her base period. As a result of this decision, the claimant is not overpaid any unemployment insurance benefits in the amount of \$520.00 which she has received from April 2, 2006 to April 29, 2006, and these benefits should be charged to the account of the employer herein as noted above.

cs/pjs