

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHEENA E MUNSCH
Claimant

APPEAL NO. 07A-UI-04441-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITY OF PALO
Employer

**OC: 04/01/07 R: 03
Claimant: Respondent (2)**

Section 96.4-3 – Able and Available for Work
Section 96.4-3 – Employed at Same Hours and Wages
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The City of Palo filed an appeal from a representative's decision dated April 25, 2007, reference 02, which allowed benefits, finding that the claimant was not performing services in the same pattern of employment as in the base period. After due notice was issued, a telephone conference hearing was scheduled for and held on May 17, 2007. Ms. Munsch participated personally. The employer participated through Ms. Stacy Dix, City Clerk.

ISSUE:

The issue is whether the claimant was able and available for work, still being employed at the same hours and wages, and whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed the evidence in the record, the administrative law judge finds: The claimant was employed by the City of Palo as an on-call social worker from May 2006 and continuing through the time of hearing. As an on-call social worker under the supervision of the city's police chief, Ms. Munsch's hours vary depending on the employer's needs. At the time that the fact finder's decision was issued, the City of Palo filed an appeal because there had been no change in the claimant's status or the pattern of her employment with the City of Palo. Ms. Munsch concurs that the pattern of employment, the hours available, and the work as well as pay essentially were unchanged at that time. It appears that Ms. Munsch discontinued filing for benefits after initially doing so because of ongoing difficulty in filing online.

Subsequent to the fact finder's decision in this matter, Ms. Munsch was suspended from work ending the resolution of legal charges against her for misdemeanor domestic abuse. The claimant was suspended from her work with the city effective April 18, 2007.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes based on the evidence in the record that at the time of the fact finder's decision, the claimant was still employed in a part-time/on-call capacity at the same hours and wages as contemplated in the original contract of hire and was not working on a reduced workweek basis different from the contract of hire. The claimant continued to be an on-call social worker, being utilized by the city's police chief as needed and there was no change in her status of wages or potential working hours. Although the claimant may have been subsequently suspended or discharged, the administrative law judge makes no finding regarding the potential separation from employment that occurred after the date of the April 1, 2007 fact finder's decision, although this may be a subject of inquiry by Iowa Workforce Development and may result in issuance of a determination on a potential separation from employment that may have occurred at a later date.

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.

871 IAC 24.22(2)i(1) provides:

Benefit 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.

i. On-call workers.

(1) Substitute workers (i.e., post office clerks, railroad extra board workers), who hold themselves available for one employer and who do not accept other work, are not available for work within the meaning of the law and are not eligible for benefits.

For the reasons stated herein, the administrative law judge concludes that the claimant was still employed part-time/on-call and there had been no change in the patterns of employment as in the base period. Therefore, the claimant is ineligible for benefits and the employer's account is not subject to charge on this issue.

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.

Because the claimant should not be considered partially unemployed, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law. The claimant is overpaid benefits in the amount of \$170.00.

DECISION:

The representative's decision dated April 25, 2007, reference 02 is hereby reversed. The claimant is unavailable for work being employed in an on-call capacity in the same hours and wages contemplated in the original agreement of hire. The claimant is overpaid unemployment insurance benefits in the amount of \$170.00.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

tpn/css