

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

MARILYN E NORTH
423 – 7TH AVE N
CLINTON IA 52732

NEW BEGINNING CARE CENTER
1000 DIXON AVE
ROCK FALLS IA 61071

Appeal Number: 04A-UI-06238-HT
OC: 05/02/04 R: 04
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 and Available
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

The employer, New Beginning Care Center (New Beginning), filed an appeal from a decision dated May 26, 2004, reference 01. The decision allowed benefits to the claimant, Marilyn North. After due notice was issued a hearing was held by telephone conference call on June 30, 2004. The claimant did not provide a telephone number where she could be contacted and did not participate. The employer participated by Director of Nursing Tom Ritter.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Marilyn North began employment with New Beginning on September 20, 2003. She was hired as a part-time licensed practical nurse on the 2:00 p.m. to 10:00 p.m. shift. Director of Nursing Tom Ritter hired her as part-time without any guarantee of a minimum number of hours per week.

In January 2004, the claimant sustained a non-work-related injury and was not released to return to work until May 3, 2004. The work schedule for the first two weeks in May had already been set, but Mr. Ritter gave her whatever hours were available.

Marilyn North has received unemployment benefits since filing a claim with an effective date of May 2, 2004.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is ineligible for benefits. The judge concludes she is.

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.

The claimant was hired as a part-time employee with no guarantee of a certain minimum number of hours per week. When she returned from her medical leave, she was given whatever hours the employer had available during the first two weeks in May 2004. She is working to the same extent as contemplated in her original contract of hire.

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 claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of May 26, 2004, reference 01, is reversed. Marilyn North is not eligible for benefits as she is not able and available for work. She is overpaid in the amount of \$490.00.

bgh/kjf