

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KENAN BECIC**  
Claimant

**APPEAL NO: 15A-UI-11051-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ABC INVESTMENT INC**  
Employer

**OC: 07/12/15**  
**Claimant: Respondent (4)**

Section 96.4-3 – Able and Available for Work  
Section 96.4-3 – Same Hours and Wages  
Section 96,3-7 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the October 1, 2015, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 16, 2015. The claimant participated in the hearing. Jennifer Headington, Director of Operations, participated in the hearing on behalf of the employer. The parties waived notice on the issue of whether the claimant is still employed with this employer at the same hours and wages.

**ISSUE:**

The issues are whether the claimant is still employed with the employer for the same hours and wages as contemplated in the original contract of hire and whether he is overpaid benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant separated from his full-time employer, Volt, on June 30, 2015. He has been employed as a part-time front desk agent for Hampton Inn & Suites from October 17, 2008 and continues to be employed in that capacity with no change in his hours or wages.

The claimant took a leave of absence from this employer and traveled overseas from July 2 to September 16, 2015. He was not able and available for work during that time. He received benefits the week ending September 19, 2015.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is still employed at the same hours and wages as contemplated in the original contract of hire but is eligible for benefits based on his previous full-time employment.

Iowa Code § 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".

Iowa Admin. Code r. 871-24.23(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 front desk agent. There has been no separation from his part-time employment and the claimant is currently working for this employer at the same hours and wages as contemplated in the original contract of hire. The claimant is disqualified from receiving benefits based on his part-time employment. However, he has a qualifying separation from his full-time position with Volt and is eligible for benefits based on that separation, provided he is otherwise eligible.

Iowa Code § 96.3-7 provides in pertinent part:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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 been overpaid unemployment insurance benefits in the amount of \$431.00 for the one week ending September 19, 2015, pursuant to Iowa Code section 96.3-7. The claimant was out of the country the majority of that week. Consequently, he is not considered able and available for work during that week.

**DECISION:**

The October 1, 2015, reference 02, decision is modified in favor of the appellant. The claimant is still employed at the same hours and wages as in his original contract of hire and therefore is not qualified for benefits based on his part-time employment. The employer's account is not subject to charge based on the claimant's part-time employment. The claimant is eligible for benefits based on his separation from his full-time employment, provided he is otherwise eligible. The claimant is overpaid benefits for the one week ending September 19, 2015.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs