

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

**AMENDED**

**Appeal Number: 05A-UI-06382-HT**  
**OC: 05/15/05 R: 03**  
**Claimant: Respondent (2)**

**MARLA J THOMPSON**  
**316 S GRAND APT 1**  
**CHARITON IA 50049**

**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, 4<sup>th</sup> 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.

**CARE INITIATIVES**  
**c/o JOHNSON AND ASSOCIATES**  
**PO BOX 6007**  
**OMAHA NE 68106-0007**

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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.4(3) – Able and Available  
Section 96.3(7) – Overpayment

**STATEMENT OF THE CASE:**

The employer, Care Initiatives, filed an appeal from a decision dated June 10, 2005, reference 01. The decision allowed benefits to the claimant, Marla Thompson. After due notice was issued, a hearing was held by telephone conference call on July 6, 2005. The claimant participated on her own behalf. The employer participated by Administrator Mary Greeley and Assistant Director of Nursing Kim Dhabolt, and was represented by Johnson and Associates in the person of Lynn Corbeil. Exhibit One was admitted into the record.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Marla Thompson was employed by Care Initiatives beginning November 1, 2001. She was hired as a full-time certified nursing assistant, which means she was scheduled eight days in every two-week pay period.

On February 5, 2005, the claimant left a note for Assistant Director of Nursing Kim Dhabolt, asking to be scheduled to work only six days every pay period, and she would take two days of vacation during every pay period to make up the difference in her salary. She had intended this to last only so long as she had vacation to use, and anticipated her schedule would revert to eight days every pay period some time in April 2005.

On May 23, 2005, the claimant left another note for Ms. Dhaholt asking be to returned to eight days every pay period because the change did not occur automatically. She had filed her claim for unemployment benefits effective May 15, 2005. The documentation submitted shows the claimant could have been scheduled for more hours than she was during the time in question, but she requested Fridays off from May through June 2005 in order to move, and made other specific vacation requests which cut down on the shifts for which she was available.

Marla Thompson has received unemployment benefits since filing a claim with an effective date of May 15, 2005.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is able and available. The judge concludes she is not.

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(29) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

The claimant cannot be considered to be able and available because she is still working for her regular employer but did not make herself available for work to the same extent as when she was hired. Since filing her claim for benefits, she requested Fridays off to move to a new home and requested other days off so she would not be scheduled on a weekend. Taken altogether, the claimant has not made herself available to her employer. Under the provisions of the above Administrative Code section, she cannot be considered to be eligible for benefits.

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 June 10, 2005, reference 01, is reversed. Marla Thompson is not eligible for benefits as she is not available to her employer. The claimant is overpaid \$235.00.

bgh/kjw