

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RACHAEL PEDRICK**  
Claimant

**APPEAL NO: 14A-UI-00987-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KIRKWOOD COMMUNITY COLLEGE**  
Employer

**OC: 12/22/13**  
**Claimant: Respondent (2/R)**

Iowa Code § 96.4-3 - Able and Available for Work  
Iowa Code § 96.3-7 - Overpayment

**STATEMENT OF THE CASE:**

Kirkwood Community College (employer) appealed an unemployment insurance decision dated January 21, 2014, reference 02, which held that Rachael Pedrick (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 18, 2014. The claimant participated in the hearing. The employer participated through Sheri Hlavacek, Human Resources Specialist.

**ISSUE:**

The issue is whether the claimant is working the same hours and wages as in her original contract of hire with this employer.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired as a full-time café line cook on July 30, 2012, and continues to be employed in that same capacity. She was off work during the employer's customer Christmas break from December 23, 2013, through January 1, 2014. The claimant received holiday pay for December 25, 2013, and for January 1, 2014.

The employer contends the claimant should be denied benefits based on her employment with an educational institution since she was on a customary holiday recess and had a reasonable assurance of continued employment. This issue was not included on the notice of hearing so the case will be remanded for further determination.

The claimant filed a claim for unemployment insurance benefits effective December 22, 2013, and has received benefits after the separation from employment in the amount of \$100.00.

**REASONING AND CONCLUSIONS OF LAW:**

The issue to be determined is whether the claimant is still employed with the employer for the same hours and wages as contemplated in the original contract of hire. The claimant has the burden of proof in establishing her ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). The claimant is still employed with the employer and not willing, able and ready to accept suitable work. When an employee places restrictions on the wages and type of work that is acceptable and when considering the length of unemployment, the employee has no reasonable expectancy of securing work and does not meet the availability requirements of the law. See 871 IAC 24.23(3). Benefits are therefore denied.

Because the claimant has been deemed ineligible for benefits, any benefits she has received could constitute an overpayment. The unemployment insurance law requires benefits be recovered from a claimant who receives benefits from an initial decision and is later denied benefits from an appeal decision, even though the claimant acted in good faith and was not otherwise at fault. The claimant is overpaid benefits in the amount of \$100.00.

An issue as to whether the claimant should be denied benefits based on her employment with an education institution arose as a result of the hearing. This case will be remanded for a further determination with regard to that issue.

**DECISION:**

The unemployment insurance decision dated January 21, 2014, reference 02, is reversed. The claimant does not meet the availability requirements of the law and benefits are denied. She is overpaid benefits in the amount of \$100.00. The case is remanded for a further determination on whether the claimant is employed with an educational institution.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs