

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBBY E. SHOWERS
Claimant

APPEAL NO. 09A-UI-16720-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

SDH EDUCATION WEST LLC
Employer

OC: 03/22/09
Claimant: Respondent (2R)

Iowa Code section 96.4(3) – Able & Available
Iowa Code section 96.4(3) – Same Hours and Wages
Iowa Code section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated October 22, 2009, reference 02, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on December 11, 2009. Claimant participated. Employer participated by Jeffrey Halverson, General Manager. The record consists of the testimony of Jeffrey Halverson and the testimony of Debby Showers.

ISSUES:

Whether the claimant is able and available for work;

Whether the claimant is still employed at the same hours and wages; and

Whether the claimant is overpaid benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a food service provider. The work site in this particular case is William Penn University. The claimant worked part time in the dish room. Her employment started on April 8, 2008. The claimant generally worked from ten to twenty hours per week.

At some point, likely September 2009, the claimant took another job and her availability to the employer became more limited. Between her new work schedule and the schedules of other employees, the claimant could only work on weekends for the employer. The claimant also works weekends for her other employer and as a result, her hours for this employer changed in the first part of October from six to twelve hours per week.

REASONING AND CONCLUSIONS OF LAW:

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".

An individual shall be deemed partially unemployed in any week in which, while employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars. Iowa Code section 96.19(38)(b).

Workforce Development rule 871 IAC 24.23(26) provides as follows:

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 resolution of this case is very challenging because neither witness had records to support their respective positions. Neither witness could be precise on what events happened and when. The representative concluded that the claimant was eligible for benefits because of a temporary layoff. There is no evidence that the claimant was on a temporary layoff. What the evidence showed is that the claimant was working two part-time jobs. She was still employed by this employer although she might have been working fewer hours. The reason she was working fewer hours was not entirely clear. One reason she was working fewer hours was that she had another part-time job and the employer had to work around that schedule. As a result, she did work three or four less hours per week for the employer although when that happened cannot be determined based on the state of this record.

The administrative law judge concludes that there was no temporary layoff and that while the claimant may have worked fewer hours for the employer, this did not represent partial unemployment as the claimant had another job and was not available to work the hours she had in the past. The claimant is not eligible for benefits beginning September 20, 2009.

Iowa Code section 96.3-7, as amended in 2008, provides:

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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The issue of whether the claimant has been overpaid unemployment insurance benefits is remanded to the Claims Section for determination..

DECISION:

The decision of the representative dated October 22, 2009, reference 02, is reversed. The claimant is not eligible to receive unemployment benefits effective September 20, 2009. This matter is remanded to the Claims Section for determination of any overpayment.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css