

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**VICTORIA M CERVELLERA**  
Claimant

**APPEAL NO. 06A-UI-11661-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PELLA COMMUNITY SCHOOL DISTRICT**  
Employer

**OC: 11/12/06 R: 02**  
**Claimant: Respondent (2)**

Section 96.4-3 – Able and Available  
Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

Pella Community School District (employer) appealed a representative's November 30, 2006 decision (reference 01) that concluded Victoria Cervellera (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 20, 2006. The claimant participated personally. The employer participated by Jon Miller, Business Manager.

**ISSUE:**

The issue is whether the claimant is available for work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on September 15, 2005, as a part-time on-call worker with no consistent hours. The claimant filed for unemployment insurance benefits on November 12, 2006. During her base period of employment, the claimant worked only as an on-call worker.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant is not available for work.

871 IAC 24.22(2)i(3) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market....

i. On-call workers.

(3) An individual whose wage credits earned in the base period of the claim consist exclusively of wage credits by performing on-call work, such as a banquet worker, railway worker, substitute school teacher or any other individual whose work is solely on-call work during the base period, is not considered an unemployed individual within the meaning of Iowa Code section 96.19(9)"a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

The claimant was hired as a part-time on-call worker and is still working when the employer needs her. When a claimant has worked only as an on-call worker during her base period, she is considered disqualified for being unavailable for work. The claimant has only worked in an on-call status during her base period. She is disqualified from receiving unemployment insurance benefits because she is considered unavailable for work.

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 benefits in the amount of \$671.00 since filing her claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

**DECISION:**

The representative's November 30, 2006 decision (reference 01) is reversed. The claimant is disqualified from receiving unemployment insurance benefits because she was not available for work. The claimant is overpaid benefits in the amount of \$671.00.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/kjw