

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JEAN CHRISTENSEN**  
Claimant

**APPEAL NO: 07A-UI-07223-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**NURSEFINDERS OF DES MOINES**  
Employer

**OC: 06/03/07 R: 02**  
**Claimant: Respondent (2)**

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

**STATEMENT OF THE CASE:**

Nursefinders of Des Moines (employer) appealed an unemployment insurance decision dated July 20, 2007, reference 03, which held that Jean Christensen (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 August 13, 2007. The claimant participated in the hearing. The employer participated through Mike Adams, Branch Director. Employer's Exhibit One was admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the claimant is able and available to work.

**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 part-time certified nurse's aide on August 4, 2006 with no guarantee of the minimum number of hours. The employer is a placement agency. The claimant left for Missouri in January 2007 and when she returned, she limited her availability to Saturdays, Sundays and Mondays. That limitation did not change until June 2007 when she opened up her availability to work mostly nights and weekends. The claimant told the employer she wanted to work at least 24 hours but the employer never agreed to that request. However, the employer does have work available and has tried to contact the claimant to offer her work but she has not returned the last ten phone calls.

The claimant filed a claim for unemployment insurance benefits effective June 3, 2007 and has received benefits after the separation from employment.

## 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.

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(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 certified nurse's aide with no guarantee of a minimum number of hours. There has been no separation from her part-time employment and the claimant is currently working for this employer at the same hours and wages as contemplated in her original contract of hire. Her hours were initially limited by her own request but are now limited by her failure to maintain contact with the employer. Benefits are denied.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The unemployment insurance decision dated July 20, 2007, reference 03, is reversed. The claimant is not eligible for unemployment insurance benefits as she does not meet the availability requirements of the law. The claimant is overpaid benefits in the amount of \$1,667.00.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs