

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEAN A BAKER
Claimant

APPEAL NO. 06A-UI-10762-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**DIERKS, ALBERT D DIERKS, LOIS J
CONRAD CASEY'S GENERAL STORE**
Employer

**OC: 10/23/05 R: 02
Claimant: Respondent (3)**

Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Conrad Casey's General Store filed a timely appeal from the October 27, 2006, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on November 21, 2006. Claimant Jean Baker participated. Co-owner Lois Dierks represented the employer. Employer's Exhibit One was received into evidence. The administrative law judge took official notice of the Agency's administrative file, including records of benefits disbursed to the claimant.

ISSUES:

Whether the claimant has been able and available for work since establishing her claim for benefits.

Whether the claimant is still employed at the same hours and wages as her original contract of hire.

Whether the claimant has been partially unemployed from her part-time employment since establishing her claim for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jean Baker commenced her part-time employment with Casey's General Store of Conrad on August 27, 2004 and continues in that employment. Ms. Baker established a claim for benefits that was effective October 23, 2005 and has received benefits. Ms. Baker established her claim for benefits in response to the employer's decision to decrease her hours of employment. Ms. Baker was suffering from poor health. The employer decided that Ms. Baker's inability to appear for assigned shifts warranted a reduction of her work hours until her health improved. However, the reduction in hours was also based on the employer's decision to hire a new clerk and the decision to assign some of Ms. Baker's hours to the new clerk. Ms. Baker continued to claim benefits until her previous hours were restored in April 2006. Ms. Baker last claimed benefits during the week that ended April 22, 2006 and has not claimed benefits since that time.

During the time the Ms. Baker's hours were reduced, Ms. Baker worked as scheduled, with the exception of occasional absences due to illness.

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 work 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). However, 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. 871 IAC 24.23(26). A claimant will be disqualified for benefits if the claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market. 871 IAC 24.23(23)

The evidence indicates that the employer reduced Ms. Baker's regular part-time hours during the period of October 2005 until April 2006. During that period, Ms. Baker was partially unemployed and eligible for benefits, provided she was otherwise eligible. Beginning the week of April 23-29, 2006, Ms. Baker returned to her previous regular part-time hours and was no longer partially unemployed. Ms. Baker was no longer eligible for benefits under a theory of partial unemployment effective April 23, 2006. In addition, Ms. Baker was working to such a degree that she was otherwise removed from the labor market. Effective April 23, 2006, Ms. Baker was no longer eligible for benefits.

Ms. Baker has not claimed benefits since returning to her regular part-time hours and, therefore, there has been no overpayment of benefits.

DECISION:

The Agency representative's October 27, 2006, reference 02, decision is modified as follows. The claimant was partially unemployed from her part-time work from the time she established her claim until the benefit week that ended April 22, 2006. The claimant is eligible for benefits for the period of partial unemployment, provided she is otherwise eligible. Effective April 23, 2006, the claimant was no longer partially unemployed and sufficiently attached to the employer to prevent her from meeting the availability requirements of Iowa Code section 96.4(3).

Accordingly, effective April 23, 2006, the claimant was no longer eligible for benefits. The claimant has continued to be ineligible for benefits up to the time of the hearing. The claimant has not claimed benefits since returning to her regular part-time hours. Accordingly, there is no overpayment of benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs