

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUZANN M BULVER

Claimant

APPEAL NO. 07A-UI-03115-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TARGET CORPORATION

Employer

**OC: 02/04/07 R: 03
Claimant: Respondent (2)**

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.3(7) – Recovery of Overpayment

STATEMENT OF THE CASE:

Target Corporation filed a timely appeal from the March 15, 2007, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on April 11, 2007. Claimant Suzann Bulver participated. David Williams of TALX UC eXpress represented the employer and presented testimony through Production Controller Damon Hall and Human Resources Representative Theresa Feldman.

ISSUES:

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

Whether the claimant has unduly limited her availability by not willing to work during the hours in which suitable work for the claimant is available.

Whether the claimant has been overpaid benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Suzanne Bulver commenced her employment with the Target Corporation on September 16, 2004 and is employed as a full-time warehouse worker. Ms. Bulver's pay rate is \$14.59 per hour plus an additional \$1.00 shift differential. Ms. Bulver's "normal," full-time workweek consisted of 36 hours. Accordingly, if Ms. Bulver worked all 36 hours in a given week, her weekly base wages, absent the \$1.00 per hour shift differential, would be \$525.24.

The employer has a labor cost management system whereby employees may volunteer to leave work early or volunteer to be absent for shifts when the number of available workers exceeds the employer's labor needs. The employer has a similar program whereby employees may volunteer to work overtime hours. Both programs are indeed voluntary. In connection with the labor cost management system, the employer maintains a clipboard in each warehouse department, so an employee may record his/her interest in leaving work early or being absent

for particular shifts. The individual employee records the dates for which he/she wishes to be considered for voluntary leave and the number of voluntary leave hours he/she desires on those dates. The employer does not compel or pressure employees to sign up for voluntary leave or voluntary overtime. The employer periodically enters the information the employee has recorded on the clipboard into a computer spreadsheet that the employer then uses to generate work schedules. The employer attempts to accommodate the requests for voluntary leave and voluntary overtime hours to the extent that its labor requirements allow. In the rare event where the employer has accommodated all requests for voluntary leave, yet needs to further reduce man-hours, the employer imposes a "mandatory schedule down." In the event that the employer imposes a "mandatory schedule down," the maximum impact on any one employee is a four-hour reduction in his/her hours for the affected week.

Ms. Bulver established a claim for benefits that was effective February 4, 2007 and has received benefits. Ms. Bulver's weekly benefit amount is \$320.00. While Ms. Bulver's claim for benefits has been active, the employer has imposed only one "mandatory schedule down." This occurred during the benefit week that ended February 24, 2007, and resulted in a four-hour reduction in Ms. Bulver's work hours for that week.

During the first week of Ms. Bulver's claim, the benefit week that ended February 10, Ms. Bulver signed up 36 hours voluntarily leave. Ms. Bulver reported zero wages and received treatment and \$320.00 in benefits. During the benefit week that ended February 17, Ms. Bulver signed up for 12 hours voluntary leave, reported wages of \$368.00, and receive no benefits because her wages exceeded her weekly benefit amount. During the benefit week that ended February 24, Ms. Bulver signed up for 10 hours voluntary leave. This was in addition to the four-hour "mandatory schedule down." Ms. Bulver reported wages of \$337.00 and receive no benefits because her wages exceeded her weekly benefit amount. During the benefit week that ended March 3, Ms. Bulver signed up for 20 hours voluntary leave, reported wages of \$245.00, and received \$155.00 and unemployment insurance benefits. During the benefit week that ended March 10, Ms. Bulver signed up 36 hours voluntary leave, reported zero wages, and received \$320.00 in benefits. During the benefit week that ended March 17, Ms. Bulver signed up for 24 hours voluntary leave, reported wages of \$184.00, and received \$216.00 in unemployment insurance benefits. During the benefit weeks ended March 24, March 31, and April 7, Ms. Bulver signed up for 36 hours voluntary leave, reported zero wages, and received \$320.00 in benefits. The Agency's record of benefits disbursed to Ms. Bulver further indicates that Ms. Bulver received \$320.00 in benefits for the week that ended April 14, and reported zero wages. In total, Ms. Bulver has received \$2,291.00 in unemployment insurance benefits as a result of her voluntary reduction in work hours.

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".

Iowa Code section 96.19(38)(c) provides:

An individual shall be deemed temporarily unemployed if for a period, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

Workforce Development rule 871 IAC 24.23(16) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

This case is similar to Amana Refrigeration Inc. vs. Iowa Department Job Service, 334 N.W.2d 316 (Ct. App. 1983), in which the Iowa Court of Appeals held that claimants subject to a partial plant shutdown were not eligible for unemployment insurance benefits for weeks during which they stated they did not want to work.

The evidence indicates that since Ms. Bulver established her claim for benefits, she has voluntarily reduced her hours of employment and has not been willing to work the hours available to her at Target Corporation. The voluntary reduction in hours has been significant and consistent. Based on the evidence and the applicable law, the administrative law judge concludes that Ms. Bulver has not met the availability requirements of Iowa Code section 96.4(3) since establishing her claim for benefits. Accordingly, Ms. Bulver is ineligible for benefits effective February 4, 2007. Ms. Bulver shall continue to be ineligible for benefits so long as she voluntarily reduces her work hours.

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 Ms. Bulver has received benefits for which she has been deemed ineligible, those benefits constitute an overpayment that Ms. Bulver must repay to Iowa Workforce Development. Ms. Bulver is overpaid \$2,291.00.

DECISION:

The claims representative's March 15, 2007, reference 01 is reversed. The claimant's claim is based on a voluntary reduction in work hours. The claimant does not meet the availability requirements of Iowa Code section 96.4(3). The claimant is ineligible for benefits effective February 4, 2007. The claimant shall continue to be ineligible for benefits so long as her claim is based on a voluntarily reduction in work hours. The claimant is overpaid \$2,291.00. The employer's account shall not be charged for benefits that have been paid to date in connection with the claim established February 4, 2007.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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