

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

MELISSA K ROBINSON  
4011 HUMMINGBIRD LN  
HIAWATHA IA 52233

FOUR OAKS INC OF IOWA  
c/o SHEAKLEY UNISERVICE  
PO BOX 1160  
COLUMBUS OH 4326-1160

Appeal Number: 04A-UI-00045-HT  
OC: 11/16/03 R: 03  
Claimant: Respondent (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

---

(Administrative Law Judge)

---

(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

The employer, Four Oaks, filed an appeal from a decision dated December 23, 2003, reference 02. The decision allowed benefits to the claimant, Melissa Robinson. After due notice was issued a hearing was held by telephone conference call on January 29, 2004. The claimant did not provide a telephone number where she could be contacted and did not participate. The employer participated by Human Resources Generalist Melissa Steckly, Night Supervisors Rick Cox and Chris Seaton, and Program Manager Michelle Allmanbinger.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Melissa Robinson began working for Four Oaks on March 2, 2003 as a night worker. In May 2003, a full-time position became available and she applied for it. She was hired in the full-time position effective May 16, 2003.

In June 2003, Ms. Robinson talked to Night Supervisor Rick Cox, saying she was not able to work the full-time hours and requested to go back to part-time. The employer approved the transfer and she returned to part-time status effective June 21, 2003.

Melissa Robinson has received unemployment benefits since filing a claim with an effective date of November 16, 2003.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is eligible for benefits. The judge concludes she is not.

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 filed a claim for unemployment benefits while she was still employed at her part-time job. She was part-time because that was the position she requested in May 2003. Therefore, she is not able and available for work under the provisions of the above Administrative Code section.

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 unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The representative's decision of December 23, 2003, reference 02, is reversed. Melissa Robinson is not eligible for benefits as she is not able and available for work. She is overpaid in the amount of \$154.00.

bgh/kjf