

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHELLEY M STEIG**  
Claimant

**APPEAL NO. 10A-UI-10782-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**  
Employer

**OC: 01/10/10**  
**Claimant: Respondent (4-R)**

Section 96.4-3 – Able to and Available for Work  
Section 96.7-2-a(2) – Charges to the Employer

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated July 21, 2010, reference 01, that concluded the claimant was available for work and the employer's account was subject to charge. A telephone hearing was held on September 14, 2010. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Kelly Jorgensen participated in the hearing on behalf of the employer.

**ISSUES:**

Was the claimant able to and available for work?  
Is the claimant eligible for partial unemployment insurance benefits?  
Is the employer's account subject to charge for benefits paid to the employer?

**FINDINGS OF FACT:**

The claimant initially filed for unemployment insurance benefits effective January 4, 2009, after her full-time job with Pella Corporation ended. After filing for unemployment insurance benefits, the claimant accepted part-time employment with the employer starting June 21, 2009.

The claimant was required to file a claim for a second benefit effective January 3, 2010. Her weekly benefit amount was \$174.00. Her claim was based on her full-time job with Pella Corporation and part-time job with the employer. The employer has continued to provide the claimant with the same part-time hours and wages as when she was hired. The claimant has had weeks in which her wages were less than her weekly benefit amount of \$174.00.

The claimant last worked on June 11, 2010. The claimant was scheduled to work on June 14, 15, and 16—six hours each day at a rate of pay of \$7.75 per hour. She was absent without notice on June 14 and 15. On June 16, 2010, the claimant informed the employer that she had accepted a job in Minnesota and was quitting her job.

The claimant filed a weekly claim for unemployment insurance benefits for the week ending June 19, 2010. She reported \$20.00 in wages and was paid \$97.11.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.19-38-b provides a claimant is eligible for partial unemployment insurance benefits if she works less than her normal full-time hours and earns less than her weekly benefit amount. The evidence establishes that the claimant was working less than the full-time hours she had worked for Pella Corporation and her wages were less than her weekly benefit amount. The evidence shows the claimant was able and available for work as required by Iowa Code section 96.4-3, except for the week of June 13 to 19 when the claimant failed to work her scheduled work hours. She was not eligible for benefits for that week.

Iowa Code section 96.7-2-a(2) provides that the amount of benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred unless the individual is still employed by a base period employer at the time the individual is receiving the benefits and is receiving the same employment from the employer that the individual received during the individual's base period or the individual has been discharged for work-connected misconduct or voluntarily quit employment without good cause attributable to the employer or refused suitable work without good cause.

The employer's account shall not be charged for benefits paid to the claimant because it is providing the same part-time employment as provided in the base period.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

**DECISION:**

The unemployment insurance decision dated July 21, 2010, reference 01, is modified in favor of the employer. The claimant was eligible for partial benefits for the weeks filed, except for the week ending June 19, 2010, when she did not work her scheduled hours for the week. The employer's account will not be charged. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs