IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

KATIE C DRULINER
Claimant

YMCA OF OSKALOOSA INC
Employer

APPEAL NO. 08A-UI-07392-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 07/06/08 R: 03
Claimant: Appellant (1-R)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.7(2)(a)(2) – Employer Liability for Benefits

STATEMENT OF THE CASE:

YMCA of Oskaloosa filed a timely appeal from the August 5, 2008, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on September 3, 2008. Claimant Katie Druliner participated. Debbie Cummings, Childcare Director, represented the employer. During the hearing, the parties indicated that the claimant had separated from the employment on or about August 25, 2008. The employer was unwilling to waive formal seven-day notice regarding the separation issues. Accordingly, the hearing was limited to the issues set forth on the face of the notice concerning the claimant's work availability and whether the employer was liable for benefits.

ISSUES:

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

Whether the claimant has been partially unemployed since she established her claim for benefits.

Whether the employer's account may be charged for benefits paid to the claimant.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Katie Druliner was employed by YMCA of Oskaloosa as a teacher's helper from 2006 until August 25, 2008. Until the end of 2007, Ms. Druliner worked 8:30 a.m. to 5:30 p.m., Monday through Friday. In November 2007, Debbie Cummings became Assistant Childcare Director. After Ms. Cummings became Assistant Childcare Director, the employer reduced Ms. Druliner's work hours to 7:00 a.m. to 2:00 p.m., Monday through Friday. The employer did not provide Ms. Druliner with a reason for the decrease in hours and Ms. Druliner did not ask for a reason. The employer subsequently changed Ms. Druliner's work schedule to 7:00 a.m. to 12:00 or 12:30 p.m. The employer did not provide a reason for the further decrease in hours and

Ms. Druliner did not ask for a reason. Ms. Cummings became the Childcare Director on June 1, 2008.

Ms. Druliner received a subsidy from the Department of Human Services (D.H.S.) that paid for her two children to attend the daycare facility where she worked. Ms. Druliner had consistently received the subsidy since she had commenced the employment. On July 9, 2008, Ms. Cummings contacted Ms. Druliner after Ms. Druliner had completed her shift. Ms. Cummings indicated that she had been reviewing the childcare assistance documents and had noted that Ms. Druliner's D.H.S. childcare assistance subsidy had expired on June 30, 2008. Ms. Druliner had previously been unaware that her subsidy had expired. Neither Ms. Druliner nor the employer had received formal notice from D.H.S. that D.H.S. would no longer subsidize Ms. Druliner's childcare expense. Ms. Cummings told Ms. Druliner that she was notifying her because she did not want Ms. Druliner to be assessed a large fee for childcare. Ms. Druliner indicated that she would contact D.H.S. the next day. Ms. Cummings and Ms. Druliner agreed that Ms. Druliner would be granted time off on July 10 so that she could contact D.H.S. Ms. Druliner told Ms. Cummings that she would make arrangements for her mother to care for her children.

On July 10, Ms. Druliner contacted the D.H.S. office. The D.H.S. representative told Ms. Druliner that the D.H.S. office was flooded, that the D.H.S. was without access to its records, and that the D.H.S. worker would get back to her as soon as possible. The D.H.S. worker told Ms. Druliner that D.H.S. would subsidize her childcare expense if the employer would guarantee Ms. Druliner 28 hours per week. Ms. Druliner contacted Ms. Cummings, who indicated that she could not guarantee Ms. Druliner 28 hours per week. Ms. Druliner asked Ms. Cummings whether she should report for her scheduled shift the following day. Ms. Cummings told Ms. Druliner that she should report for work. Ms. Druliner had made arrangements for her mother to care for her children. Ms. Druliner disenrolled her children from the daycare.

Ms. Druliner reported for work at 7:00 a.m. on Friday, July 11. Ms. Cummings was not working that day. Ms. Druliner notified the Assistant Childcare Director, Jennifer Baker, that she had made arrangements for her mother to care for her children on an ongoing basis. Ms. Baker is still employed with the YMCA childcare facility, but did not testify at the hearing. At 10:30 a.m., Ms. Baker sent Ms. Druliner home early, due to a lack of work. Ms. Druliner checked the schedule for the next week, July 14-18, and saw that she was not on the schedule. Ms. Cummings had completed the schedule on July 10 and had not scheduled Ms. Druliner for any hours on the July 14-18 schedule. Ms. Cummings was no inclined to change the schedule after she had completed it.

On July 15, the Assistant Childcare Director, Jennifer Baker, left a voice mail message for Ms. Druliner between 9:00 and 10:00 a.m., asking her to report for work. Ms. Cummings does not know what work would have been available for Ms. Druliner if she had worked on July 15.

On or about June 16, Ms. Cummings received the notice of claim for Workforce Development that alerted the employer that Ms. Druliner had applied for unemployment insurance benefits. Ms. Cummings erroneously interpreted the application for unemployment insurance benefits to mean that Ms. Druliner was not interested in working at the daycare.

On June 17, Ms. Druliner and Ms. Baker ran into one another outside work. Ms. Baker asked Ms. Druliner what she had been up to, since she was not on the work schedule. Ms. Druliner told Ms. Baker that she did not know what was going on with the work schedule. Ms. Druliner told Ms. Baker that she had just been hanging out with her sister and letting her niece come

over. Ms. Druliner did not say anything to Ms. Baker to indicate that she was not available for work at the daycare or not interested in work at the daycare. However, when Ms. Baker reported the conversation to Ms. Cummings, Ms. Cummings erroneously interpreted the conversation to mean that Ms. Druliner was unavailable for work at the daycare because she was babysitting her niece.

Ms. Cummings did not schedule Ms. Druliner for any hours for the next week, July 20-25. When Ms. Druliner contacted Ms. Cummings to ask why she had not been scheduled for any hours for a second week, Ms. Cummings cited the conversation with Ms. Baker and the application for unemployment insurance benefits as her reasons for not giving Ms. Druliner any hours on the schedule. Ms. Druliner indicated that she wanted to work. Ms. Cummings was not inclined to change the schedule after she had completed it. Ms. Cummings indicated that she would call Ms. Druliner if she was needed. The employer called Ms. Druliner in to work on July 22, 5:22 to 8:33 a.m., and Ms. Druliner worked the hours the employer made available. The employer called Ms. Druliner in to work on July 25, 12:00 to 2:00 p.m., and Ms. Druliner worked the hours the employer made available.

Ms. Cummings put Ms. Druliner back on the schedule effective the week of July 28 through August 1. However, Ms. Cummings only scheduled Ms. Druliner to work 5:30 to 8:30 a.m., Monday through Friday. This represented a further decrease in Ms. Druliner's hours of employment from the 7:00 to noon schedule she had before Ms. Cummings had taken her off the schedule. In addition to permanently changing and reducing Ms. Druliner's work hours, Ms. Cummings moved Ms. Druliner into a kitchen helper position. Ms. Druliner appeared for each of her scheduled shifts during the week of July 28-August 1, August 4-8, and August 11-15. During the week of August 18, Ms. Druliner appeared for her shifts on August 18, 19, and 21. Ms. Druliner had requested August 20 off so that she could accompany her daughter to the first day of kindergarten. On Friday, August 22, Ms. Druliner appeared for work, but left shortly there after due to illness. On or about August 25, 2008, Ms. Druliner separated from the employment.

Prior to Ms. Cummings' decision to take Ms. Druliner off the schedule in July, Ms. Druliner had been absent from work due to personal illness or the illness of her child, as follows. The absences were properly reported to the employer and supported, where appropriate, by a doctor's excuse. Ms. Druliner had been absent for a couple hours on June 5 to attend an appointment. Ms. Druliner had been absent on June 16 and 17 due to personal illness. On July 1 and 2, Ms. Druliner had been absent because her child was ill.

The Y.M.C.A. is a base period employer.

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:
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> 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 24.22(2) provides:

> Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.
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> (2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Ms. Druliner would be deemed partially unemployed during any week in which, while she was employed at the Y.M.C.A. daycare, the employer scheduled her to work less than her regular workweek, provided her wages for the week did not exceed her weekly unemployment insurance benefits amount by more than $15.00. See Iowa Code section 96.19(38)(b).

Ms. Druliner would be deemed “temporarily unemployed” during any week in which, while she was employed at the Y.M.C.A. daycare, the employer did not schedule her to work due to a lack of work or an involuntary vacation. See Iowa Code section 96.19(38)(c).

The evidence indicates that Ms. Druliner was temporarily unemployed from the Y.M.C.A. daycare and/or partially unemployed from the Y.M.C.A. daycare effective July 11, 2008. The period of temporary and/or partial unemployment continued until Ms. Druliner separated from the employment. At the time Ms. Druliner established her claim for unemployment insurance benefits, she was not receiving the same employment she had received during her base period, which consisted of the second, third, and fourth quarter of 2007 and the first quarter of 2008. Ms. Druliner had not requested a reduction in work hours or to be taken off the schedule. Since Ms. Druliner established her claim for unemployment insurance benefits, she was available to work her regular hours. Ms. Druliner had made appropriate alternative arrangements for childcare and had appropriately notified the employer. Ms. Druliner’s childcare situation did not justify her removal from the work schedule or the change in her work hours. Ms. Druliner was eligible for benefits effective the benefit week that ended July 12, 2008 and continued to be eligible for benefits through the benefit week that ended August 23, 2008, when she separated from the employment.

Iowa Code section 96.7(2)(a)(2) provides, in relevant part, as follows:

> [I]f the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during

the individual's base period, benefits paid to the individual shall not be charged against the account of the employer.

The evidence in the record establishes that since the effective date of Ms. Druliner's claim for benefits, she was not receiving the same employment she had received from the Y.M.C.A. during her base period. Accordingly, the employer's account may be charged for benefits paid to Ms. Druliner for the period of July 13 through August 23, 2008.

Because there has been a separation from the employment, this matter will need to be remanded for determination of whether the separation disqualifies Ms. Druliner for benefits on or after August 24, 2008 and for determination of the employer's liability for benefits paid for the period on or After August 24, 2008. Because the employer was unwilling to waive formal notice on the separation issues, those issues could not be addressed as part of the appeal hearing. The evidence suggests a voluntary quit due to significant changes in the work conditions. The Workforce Development representative should consider the findings of fact contained herein. The Workforce Development representative may also want to review the sworn testimony the parties provided at the appeal hearing. Because there has been a separation from the employment, the Workforce Development representative should also determine, if warranted, whether Ms. Druliner has met the work availability requirements of Iowa Code section 96.4(3) since August 24, 2008.

DECISION:

The Agency representative's August 5, 2008, reference 01, is affirmed. The claimant was temporarily unemployed and/or partially unemployed from July 13 through August 23, 2008. The claimant is eligible for benefits for that time period, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant during that period.

REMAND:

The matter is remanded to the Claims Division for determination of whether the separation from the employment on or about August 25, 2008 disqualifies the claimant for unemployment insurance benefits and for determination of the employer's liability for benefits paid for the period on or After August 24, 2008. The Claims Division should also consider, if warranted, whether Ms. Druliner has met the work availability requirements of Iowa Code section 96.4(3) since August 24, 2008.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

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