

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAURA BRIGGS

Claimant

APPEAL NO: 09A-UI-09810-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAMILY PET VETERINARY

Employer

OC: 05-31-09

Claimant: Respondent (2R)

Section 96.4-3 – Able and Available for Work
Section 96.4-3 – Same Hours and Wages
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 7, 2009, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 23, 2009. The claimant participated in the hearing. Dr. Jennifer Mathis, President and Jason Peck, Senior Veterinary Consultant, participated in the hearing on behalf of the employer. Employer's Exhibit's One through Four were admitted into evidence.

ISSUE:

The issue is whether the claimant was employed with the employer for the same hours and wages as contemplated in the original contract of hire through the time of her separation June 21, 2009.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired as a part-time animal caretaker for Family Pet Veterinary from July 1, 2008 to June 21, 2009. Her hours were based on the number of animals boarding at any given time and the work that needed to be done as a result as well as some special projects such as painting and outdoor maintenance. The claimant's hours were greater during holidays and heavy travel times. Around spring break 2009 the employer asked the claimant to budget her hours and not work extra hours. She was expected to complete her assigned tasks but not take on miscellaneous chores on a daily basis that were not approved by the employer ahead of time. The employer asked her to be efficient with her time and not give extra play time to the animals. She was never guaranteed a certain number of hours and worked as many hours as available, more during holidays and times of increased travel. She averaged 30.5 hours per week in 2008 and 29.25 hours per week through June 14, 2009, because she worked throughout the entire year of 2008 and therefore worked more holidays and traditional vacation months.

The claimant has claimed and received benefits from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was employed at the same hours and wages as contemplated in the original contract of hire through June 21, 2009.

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 was hired as a part-time animal caretaker. Although there has since been a separation from this part-time employment the claimant worked for the employer at the same hours and wages as contemplated in the original contract of hire until her separation June 21, 2009. Consequently, the claimant is disqualified from receiving benefits based on her part-time employment.

The unemployment insurance law provides that benefits must 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. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits 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 not eligible for those benefits. The matter of determining 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 July 7, 2009, reference 01, decision is modified in favor of the appellant. The claimant is still employed at the same hours and wages as in her original contract of hire and therefore is not eligible for benefits. The claimant has received benefits but was not eligible for those benefits. The matter of determining 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs