

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JIM W GRONEN

Claimant

APPEAL NO. 07A-UI-02973-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TARGET CORPORATION

Employer

**OC: 09/24/06 R: 03
Claimant: Respondent (2)**

Section 96.4(3) – Able and Available
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Target Corporation filed an appeal from a representative's decision dated March 23, 2007, reference 03, which allowed benefits to Jim Gronen on a finding that he was on a temporary layoff. After due notice was issued, a hearing was held by telephone on April 10, 2007. Mr. Gronen participated personally. The employer participated by Daman Hall, Production Controller, and Teresa Feldman, Human Resources Representative. The employer was represented by David Williams of TALX Corporation.

ISSUE:

At issue in this matter is whether Mr. Gronen is eligible to receive job insurance benefits on his additional claim filed effective January 28, 2007.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Gronen has been employed by Target since May 25, 2003. He works full time in the warehouse. For the last four years, the employer has maintained a "voluntary leave early" (VLE) program. Each department and each shift maintains a clipboard on which employees can sign up for days they do not want to work. Employees can also use the clipboard to designate days they are available for overtime work. The clipboards are maintained throughout the year and not just during periods when work might be slow. The employer determines its production needs and then advises employees whether a request for time off is granted.

There are occasions when the employer does not have a sufficient amount of work for all employees and not enough people have signed up to take time off. On those occasions, the employer provides other work, such as housekeeping tasks. The employer also conducts mass re-certifications on equipment, training, and cross-training during these down times. The employer will also use such occasions to hold celebrations in which food is brought in and longer breaks are allowed. Since May of 2005, there has been only one occasion on which the employer has had to reduce employees' hours due to lack of work and not enough volunteers

for time off. During one week in mid-February of 2007, all employees in the warehouse lost four hours of work.

Except for the one week in mid-February of 2007, the employer has always had full-time hours available for Mr. Gronen. It was his choice not to work during those weeks in which he worked less than full time. He has received a total of \$1,523.00 in job insurance benefits since filing his additional claim effective January 28, 2007.

REASONING AND CONCLUSIONS OF LAW:

Mr. Gronen filed an additional claim for job insurance benefits because he was working fewer hours. However, the employer did not request volunteers to take time off. Target would have continued to provide him with the same number of hours of work each week if he had not signed up to take time off through the VLE program. Although he may not have been performing his usual job on all occasions, the supplemental work was related to his work. If there was not enough work and not enough volunteers to take time off, the employer offered training opportunities related to the employment. Employees could also perform housekeeping duties within the department.

Because it was Mr. Gronen's decision not to work full time each week, the administrative law judge concludes that he was voluntarily unemployed during those weeks. Had he chosen to work, the work would have been made available. In essence, he was on a voluntary leave of absence during those weeks in which he signed up to have time off. An individual who is voluntarily unemployed is not entitled to job insurance benefits. See 871 IAC 24.22(2)j. For the reasons cited herein, it is concluded that Mr. Gronen is not eligible to receive job insurance benefits on his additional claim filed effective January 28, 2007.

Mr. Gronen has received benefits on his additional claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated March 23, 2007, reference 03, is hereby reversed. Mr. Gronen is not entitled to benefits effective January 28, 2007 as he was voluntarily unemployed. He has been overpaid \$1,523.00 in job insurance benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs