

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICOLE SCHULZ
Claimant

APPEAL NO. 09A-UI-11286-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRESTRIDGE INC
Employer

**Original Claim: 06/21/09
Claimant: Respondent (2/R)**

Iowa Code § 96.4-3 - Able and Available for Work
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Crestridge, Inc. (employer) appealed an unemployment insurance decision dated July 31, 2009, reference 01, which held that Nicole Schulz (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 21, 2009. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which she could be contacted, and therefore, did not participate. The employer participated through Harold McElderry, Administrator. Based on the evidence, the arguments of the party, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant is working the same hours and wages as in her original contract of hire with this employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired as a part-time dietary aide on April 12, 2006. She was not given a minimum number of hours that she would be given and was advised that her hours would vary. She was employed in that same capacity with no change in her hours or wages.

However, the claimant is no longer accepting any hours, even though work is available, and the employer has been unable to contact her. The employer was unable to report the claimant's final work date. There has been no determination made as to the claimant's final separation from this employer.

The claimant filed a claim for unemployment insurance benefits effective June 21, 2009 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant is still employed with the employer for the same hours and wages as contemplated in the original contract of hire.

Iowa Code § 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 dietary aide. Previously, there was no separation from her part-time employment and the claimant was working for this employer at the same hours and wages as contemplated in her original contract of hire. Benefits are denied.

This case is remanded for further determination regarding the claimant's final separation from her employer since she is no longer working.

Iowa Code § 96.3(7) 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. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an

overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The unemployment insurance decision dated July 31, 2009, reference 01, is reversed. The claimant did not meet the availability requirements of the law and did not qualify for unemployment insurance benefits. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue. The case is also remanded for further determination as to the claimant's final separation from employment.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw