

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHEILA A CARY
Claimant

APPEAL NO. 10A-UI-04094-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAREWAY STORES INC
Employer

OC: 02/07/10
Claimant: Respondent (1)

Section 96.4(3) – Able and Available
Section 96.7(2)a(2) – Relief of Charges

STATEMENT OF THE CASE:

Fareway Stores, Inc. filed an appeal from a representative's decision dated March 11, 2010, reference 03, which allowed benefits to Sheila Cary but denied the employer relief from charges. After due notice was issued, a hearing was held by telephone on April 29, 2010. Ms. Cary participated personally. The employer participated by Jason Craun, Market Manager, and was represented by Garrett Piklapp, General Counsel.

ISSUE:

At issue in this matter is whether Ms. Cary has satisfied the availability requirements of the law. A secondary issue is whether the employer should be relieved of charges for any benefits paid to her.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Cary has been employed by Fareway Stores, Inc. since June of 2004. She works part time in the meat department. In calendar year 2009, she averaged 31.5 hours of work each week. She filed a claim for job insurance benefits effective February 7, 2010 because of a decrease in the number of hours she was scheduled to work.

The reduction in hours was due to business being slow. Ms. Cary was reduced to working from 10 to 20 hours each week. She accepted additional hours from other workers if she was available. Her usual hours were restored in early March. She remained available to work the same number of hours she had previously been scheduled to work.

REASONING AND CONCLUSIONS OF LAW:

In order to receive job insurance benefits, an individual must be able to and available for work. Iowa Code section 96.4(3). Ms. Cary has remained available to work the same number of hours she has always worked for Fareway Stores, Inc. It is true that she has declined hours on occasion. However, she was being asked to fill in for another worker on short notice or on days

she was historically not available to work. Being available to work on short notice is different from being available to work times that are scheduled in advance. The administrative law judge concludes that Ms. Cary is partially unemployed but remained available to the employer to the same extent as previously available.

The employer is not entitled to a relief of charges pursuant to Iowa Code section 96.7(2)a(2) as it is not providing Ms. Cary with the same employment as it did during the base period of her claim. The employer conceded that she was being scheduled for fewer hours than she had been working.

DECISION:

The representative's decision dated March 11, 2010, reference 03, is hereby affirmed. Ms. Cary is allowed job insurance benefits, provided she is otherwise eligible. The employer will be charged its pro rata share for such benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs