

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

REBECCA J SPINDLOW  
2117 S MAIN ST  
BURLINGTON IA 52601

HARDEES FOOD SYSTEMS INC  
c/o TALX UCM SERVICES INC  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-02216-DWT  
OC 01/11/04 R 04  
Claimant: Respondent (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.4-3 – Ability to and Availability for Work  
871 IAC 24.23(26) – Partially Unemployed When Working Part time

STATEMENT OF THE CASE:

Hardees Food Systems, Inc. (employer) appealed a representative's February 17, 2004 decision (reference 02) that concluded Rebecca J. Spindlow (claimant) was eligible to receive unemployment insurance benefits because the employer reduced the hours she usually worked as a part-time employee. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 18, 2004. The claimant participated in the hearing. Julie Nixon, the general manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.'

ISSUES:

Is the claimant working the same number of hours she usually works for the employer?

Is the claimant eligible to receive unemployment insurance benefits as of January 11, 2004?

Has the claimant been overpaid any unemployment insurance benefits?

**FINDINGS OF FACT:**

The claimant has worked about three years for the employer at the current location. She has worked as a part-time cashier. During the summer months, all employees work more hours. From around Thanksgiving to April or May, the employer's business is slower and all employees' hours are reduced. During the employer's slow period, the claimant is scheduled to work between 16 and 22 hours a week. During the summer months, the employer schedules the claimant to work 26 to 32 hours a week. The claimant has worked these hours for the last three years.

The claimant has a medical condition, which sometimes prevents her from working. From February 13 through March 18, 2004, the claimant missed eight days of work. Some of this time, the claimant was hospitalized. There have been days the claimant reported to work and then asked to leave work early because she did not feel well. The employer knows the claimant has a medical problem and does not try to schedule her too many hours so she is not overworked.

The claimant established a claim for unemployment insurance benefits during the week of January 11, 2004. She has received a total of \$442.00 in benefits for the weeks ending January 17 through March 13, 2004.

**REASONING AND CONCLUSIONS OF LAW:**

Each week a claimant files a claim for unemployment insurance benefits, she must be able to and available for work. Iowa Code §96.4-3. When 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, the claimant cannot be considered partially unemployed. 871 IAC 24.23(26).

The facts show the claimant has always worked fewer hours in January, February and March. The employer, however, has always scheduled the claimant to work a minimum of 16 hours a week during the slower months. The employer has no control when the claimant does not work all the hours she had been scheduled because she is ill and unable to work. The evidence shows the claimant works the same hours and wages she has always worked for the employer. For unemployment insurance purposes, the claimant is not partially unemployed. As a result, she is not eligible to receive unemployment insurance benefits as of January 11, 2004.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code §96.3-7. The claimant is not legally entitled to receive benefits during the weeks ending January 17 through March 20, 2004. She has been overpaid a total of \$442.00 in benefits for these weeks.

DECISION:

The representative's February 17, 2004 decision (reference 02) is reversed. The claimant is not partially unemployed because she still works the hours she has always worked for the employer. The claimant is not eligible to receive unemployment insurance benefits as of January 11, 2004. If the employer schedules her to work substantially fewer hours than she normally works during the employer's slow season, the claimant can reopen her claim. The claimant is not legally entitled to receive benefits during the weeks ending January 17 through March 20, 2004. She has been overpaid a total of \$442.00 in benefits she received for these weeks.

dlw/kjf