

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HOLLY J GOTTSCHALK
Claimant

APPEAL NO. 08O-UI-02317-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

J & P O'HARA INC
Employer

OC: 09/16/07 R: 04
Claimant: Appellant (4)

Section 96.4(3) – Able and Available
Section 96.5(1)a – Quit for Other Employment
Section 96.7(2)a(2) – Relief from Benefit Charges

STATEMENT OF THE CASE:

Holly Gottschalk filed an appeal from a representative's decision dated October 19, 2007, reference 01, which denied benefits effective September 16, 2007 on a finding that she was not available for work. After due notice was issued, a hearing was held by telephone on November 13, 2007. The November 14, 2007 decision of the administrative law judge reversed the disqualification. The employer, J & P O'Hara, Inc., filed a further appeal and, on March 3, 2008, the Employment Appeal Board remanded the matter for a new hearing because the employer had not received notice of the prior hearing.

Pursuant to the order of remand, due notice was issued scheduling a hearing for March 24, 2008. Ms. Gottschalk participated personally. The employer participated by Phil Romer, Owner. The parties waived notice on the issue of Ms. Gottschalk's separation from the employment.

ISSUE:

The primary issue in this matter is whether Ms. Gottschalk satisfied the availability requirements of the law as of September 16, 2007. There is an additional issue as to whether she was separated from employment for any disqualifying reason.

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: Ms. Gottschalk began working for J & P O'Hara, Inc., doing business as Happy Joe's, in November of 2001. She was hired to work part time but became full time in 2004. In August of 2007, she accepted a full-time job with Quebecor. She remained with Happy Joe's on a part-time basis, working from seven to ten hours each week.

Ms. Gottschalk was laid off by Quebecor in mid-September and continued working part time for Happy Joe's. She filed a claim for job insurance benefits effective September 16, 2007. When she was recalled by Quebecor in mid-November, she was changed to a different shift. Because

she was then working a day shift for her full-time employer, she was no longer available to work her usual daytime hours at Happy Joe's. As a result, she quit the job with Happy Joe's. Continued work would have been available if she had not quit.

REASONING AND CONCLUSIONS OF LAW:

Ms. Gottschalk filed her claim for job insurance benefits effective September 16, 2007 because she was laid off from her full-time employment with Quebecor. She had changed her status with Happy Joe's from full time to part time at least one month before she filed for benefits and did so only because she was working full time elsewhere. During her layoff from Quebecor, she remained available to work the same number of hours for Happy Joe's as she did before the layoff. Based on the foregoing, the administrative law judge cannot conclude that she was unduly limiting her availability for work.

The administrative law judge must determine whether Happy Joe's should be charged for any benefits paid to Ms. Gottschalk as of September 16, 2007. An employer is entitled to a relief from charges if it is currently providing the same employment to a claimant as was provided during the base period of the claim. Iowa Code section 96.7(2)a(2). In the case at hand, Happy Joe's was not responsible for Ms. Gottschalk's decision to become a part-time employee or for the fact that she was laid off by Quebecor. Had she not reduced her hours, she presumably would have continued to work 30 or more hours per week. Because Happy Joe's was willing to provide the same employment as it did during the base period, the administrative law judge concludes they should be relieved of charges for any benefits paid to Ms. Gottschalk during her layoff. The administrative law judge believes this conclusion is consistent with the intent of section 96.7(2)a(2).

As of the date of the hearing, there had been a complete separation from employment with Happy Joe's. Ms. Gottschalk left the employment to accept other employment and has performed services in the new employment. As such, her separation from Happy Joe's would not be a bar to her receiving benefits on any new or additional claim. See Iowa Code section 96.5(1)a.

For the reasons cited herein, the administrative law judge concludes that Ms. Gottschalk is entitled to job insurance benefits effective September 16, 2007 as she was available for work within the meaning of the law. Benefits are denied as of the date she returned to full-time employment with Quebecor in November of 2007 as she was no longer available for work. Ms. Gottschalk was separated from Happy Joe's in November of 2007 for no disqualifying reason.

DECISION:

The representative's decision dated October 19, 2007, reference 01, is hereby modified. Ms. Gottschalk is allowed benefits effective September 16, 2007 though November of 2007 as she satisfied the availability requirements of the law. She was separated from Happy Joe's in

November of 2007 for no disqualifying reason. Happy Joe's will not be charged for benefits paid to Ms. Gottschalk.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css