

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CINDY L MENNER
Claimant

APPEAL NO: 09A-UI-18969-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAREWAY STORES
Employer

OC: 011/08/09
Claimant: Respondent (4)

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

STATEMENT OF THE CASE:

The employer appealed a department decision dated December 8, 2009, reference 01, that held the claimant was eligible for benefits effective November 8, 2009, and the employer was denied a relief of charges. A telephone hearing was held on January 28, 2010. The claimant participated. Keith Boss, Assistant Store Manager, and General Counsel, Garrett Piklapp, participated for the employer.

ISSUES:

The issue is whether the claimant is able and available for work.

The further issue is whether the employer should be relieved of benefit charges.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began work for the employer as a part-time cashier/clerk to work 5-25 hours per week beginning November 10, 2008. The claimant averaged 14.2 hours during the course of her employment leading to the filing of her unemployment claim. The claimant worked scheduled hours and all hours made available to her. The claimant filed an unemployment claim due to a modest reduction in work hours, and her frustration in not getting full-time hours. The employer did not guarantee the claimant she would work any certain number of hours at the time of hire, only a range of 5 to 25 hours each week.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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".

The administrative law judge concludes that the claimant is able and available for work for the employer on the same part-time basis since her date of hire to the present, and no disqualification is imposed.

Iowa Code section 96.7-2-a(2) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

The administrative law judge further concludes that the employer is entitled to a relief of benefit charges pursuant to the law section cited above.

The claimant is working/receiving the same number and range of part-time hours now as when she was hired from this base period employer.

DECISION:

The department decision dated December 8, 2009 reference 01, is modified in favor of the employer. The claimant is able and available for work, and eligible for benefits effective November 8, 2009. The employer is granted relief from said charges.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs