

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

TRACI D JOHNSON
1456 E 18TH ST
DES MOINES IA 50316

CITY OF DES MOINES
PAYROLL DEPT – BERYL GUY
400 ROBERT D RAY DR
DES MOINES IA 50309

Appeal Number: 06A-UI-02272-CT
OC: 02/05/06 R: 02
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, 4th 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 is 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4(3) – Able and Available
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

The City of Des Moines filed an appeal from a representative's decision dated February 22, 2006, reference 05, which held that Traci Johnson satisfied the availability requirements of the law. After due notice was issued, a hearing was held by telephone on March 15, 2006. Ms. Johnson participated personally and offered additional testimony from Castine Daye. The employer participated by Mike Carter, Human Resources Manager.

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. Johnson began working for the City of Des Moines on August 7, 2005. She was hired as a part-time outreach worker. The job was advertised as being part time for 20 hours each week. There was no mention of overtime in the posting.

During the period from October of one year until January or February of the following year, overtime is available for outreach workers such as Ms. Johnson. Beginning in February, the workers are restricted to 20 hours per week. Ms. Johnson filed a claim for job insurance benefits effective February 5, 2006 because overtime was no longer available. She did not have other employment while working for the City of Des Moines.

Ms. Johnson has received a total of \$950.00 in job insurance benefits since filing her claim effective February 5, 2006.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Johnson is entitled to job insurance benefits on her claim filed effective February 5, 2006. She filed her claim because she was working fewer hours than she had been. However, she was hired for a part-time position with no guarantee of overtime hours. Ms. Johnson knew the position she was applying for was for only 20 hours per week. The employer just happens to have more hours available during certain parts of the year. The employer never reduced Ms. Johnson below the 20 hours per week she was hired to work. As such, it must be concluded that there has been no reduction in her workweek. Where an individual is still employed in her part-time job under the same terms and conditions as originally hired and is not working a reduced workweek, she is not considered partially unemployed and is not considered available for work within the meaning of the law. See 871 IAC 24.23(26). For the above reasons, the administrative law judge concludes that Ms. Johnson is not available for work as required by Iowa Code section 96.4(3).

Ms. Johnson has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated February 22, 2006, reference 05, is hereby reversed. Ms. Johnson has not satisfied the availability requirements of the law since filing her claim effective February 5, 2006. Benefits are withheld until such time as she satisfies Workforce Development that she is available for work within the meaning of the law. Ms. Johnson has been overpaid \$950.00 in job insurance benefits.

cfc/tjc