

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SARAH B ADAMS
Claimant

APPEAL NO. 10A-UI-05756-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NORDSTROM INC
Employer

**Original Claim: 03/07/10
Claimant: Respondent (2-R)**

Section 96.19-38-a & b – Total and Partial Unemployment
Section 96.7-2-a(2) – Same Base Period Employment
871 IAC 24.22(2)f – Part-Time Worker – Able and Available
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated April 8, 2010, reference 01, which held claimant able and available for work. After due notice, a telephone conference hearing was scheduled for and held on July 7, 2010. Claimant participated personally. Employer participated by Peg Elofson, Employer Representative, with witnesses Kaley Dolan, Human Resource Assistant; Robin Tospisil, Human Resource Manager; and Shawn Rudie, Workforce Team Leader. Claimant responded to the hearing notice and did not participate as she was not available at the number provided.

ISSUE:

The issues are whether claimant is still employed at the same hours and wages, whether claimant is able and available, and whether claimant is overpaid unemployment benefits and is partially unemployed.

FINDINGS OF FACT:

The claimant currently works for Nordstrom, Inc, a base period employer, part-time, under different terms and conditions as contemplated in the original contract of hire. Claimant was hired to work full-time and did work full-time hours during some of the base period. Employer eliminated a shift, which forced claimant into part-time hours. Effective March 7, 2010, claimant applied for and received partial unemployment. Claimant's work schedule consisted of 26 hours of offered work per week. Claimant voluntarily excused herself from most of the hours for every week worked after March 7, 2010. The most claimant worked was 15.22 hours out of 26 offered, but most weeks claimant worked one to eight hours.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is partially unemployed and the employer is not relieved of benefit charges. However, claimant did not

accept the hours of work offered by employer during the weeks after filing for unemployment. Claimant instead worked significantly less than what was offered, indicating that she is not able and available for her 26-hour work shift. Claimant is not able and available for work effective March 7, 2010. Benefits shall be withheld effective March 7, 2010. This matter is remanded for determination of overpayment.

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".

Iowa Code section 96.19-38 provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which, while employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

An individual shall be deemed partially unemployed in any week in which the individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

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.

871 IAC 23.43(4)a provides in part:

(4) Supplemental employment.

a. An individual, who has been separated with cause attributable to the regular employer and who remains in the employ of the individual's part-time, base period employer, continues to be eligible for benefits as long as the individual is receiving the same employment from the part-time employer that the individual received during the base period. The part-time employer's account, including the reimbursable employer's account, may be relieved of benefit charges....

Because the claimant has worked a reduced work week caused by elimination of a shift by employer, she is partially unemployed. Claimant is considered partially unemployed. Benefits are allowed, provided claimant is otherwise eligible. Inasmuch as the current part-time employer is not offering the same wages and hours as in the base period, benefit charges shall be made to its account. However, since claimant has refused to work the hours offered, she is found not able and available for unemployment effective March 7, 2010. Benefits shall be withheld until claimant proves she is willing to work the hours offered.

The next issue concerns an overpayment of unemployment insurance benefits.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the

overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

This matter is remanded to claims section for determination of an overpayment.

DECISION:

The April 8, 2010, reference 01, decision is reversed and remanded for determination of overpayment. The claimant is held partially unemployed. Unemployment benefits are denied, as claimant is not able and available for work effective March 7, 2010 and until claimant proves the ability to work full-time hours. The account of the current part-time employer shall be charged if future benefits are paid.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/kjw