

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

GEORGETTE D ROSS
1043 – 15TH ST
ROCK ISLAND IL 61201 2554

JOHN Q HAMMONS – DAVENPORT
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166 0283

AMENDED

Appeal Number: 05A-UI-04545-DWT
OC: 03/13/05 R: 04
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party request the Appeals Section to reopen the record at the address listed at the top of this decision or 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 to and Available for Work
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

John Q. Hammons – Davenport (employer) appealed a representative's April 14, 2005 decision (reference 01) that concluded Georgette D. Ross (claimant) was eligible to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant was not working the same number of hours that she been during her base period. A telephone hearing was scheduled on May 19, 2005. The claimant did not respond to the hearing notice and did not participate in the hearing. The employer responded to the hearing notice, but neither of the employer's witnesses was available for the hearing. A message was left for the employer to contact the Appeals Section immediately if the employer wanted to participate in the hearing. The employer did not contact the Appeals Section again. Based on

the administrative file and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law and decision.

ISSUES:

Is the claimant eligible to eligible to receive unemployment insurance benefits as of March 13, 2005?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer in November 1995. The claimant established a claim for unemployment insurance benefits during the week of March 13, 2005. Based on wage credits during the claimant's current benefit year, the claimant is eligible to receive maximum weekly benefit amount of \$181.00.

In 2005 from February 19 through 25, the claimant requested three days off. The claimant worked four days and her co-workers worked five days. From February 26 through March 4, the claimant asked for four days off from work. The clamant worked three days and her co-workers worked five days. From March 5 through 11, the claimant worked five days. From March 12 through 18, the claimant did not ask for any time off. She worked four days just like everyone else. From March 19 through 25, the claimant ultimately asked for three days off from work. When the employer offered her work during this period, the claimant declined the work. The employer understood the claimant was not available to work some days because her daughter is expecting a child and is confined to bed rest.

After the claimant filed her claim for benefits, she filed claims for the weeks ending March 19 through May 21, 2005. The claimant has reported wages for every week she filed a claim for benefits. The claimant's gross wages range from \$68.00 to \$185.00. The claimant has received a total of \$915.00 in benefits during these weeks.

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 originally hired, a claimant cannot be considered partially unemployed. 871 IAC 24.23(6). Without the claimant's testimony, a preponderance of the evidence suggests the claimant's hours were reduced only because the claimant wanted some time off or was not available to work all the hours the employer had planned to schedule her to work. Before a claimant can be considered partially unemployed, she must be able to work all the hours the employer intends to schedule her to work. The evidence does not establish that the claimant is partially unemployed or that the employer put scheduled the claimant to work reduced workweeks. Therefore, the claimant is not eligible to receive unemployment insurance benefits as of March 13, 2005.

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 eligible to receive unemployment

insurance benefits during the weeks ending March 19 through May 21, 2005. The claimant has been overpaid a total of \$915.00 in benefits she received for these weeks.

DECISION:

The representative's April 14, 2005 decision (reference 01) is reversed. The claimant is not eligible to receive unemployment insurance benefits because she did not establish she is partially unemployed as a result of the employer reducing her hours. As of March 13, 2005, the claimant is not eligible to receive unemployment insurance benefits. The claimant remains ineligible to receive benefits until she reopens her claim and establishes she is eligible to receive benefits. The claimant is not legally entitled to receive benefits for the weeks ending March 19 through May 21, 2005. The claimant has been overpaid and must repay a total of \$915.00 in benefits she received for these weeks.

dlw/sc