

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI	
<b>BERTHA A RITCHART</b> Claimant	<b>APPEAL NO. 07A-UI-01276-S2T</b>
<b>CADRE TELESERVICES</b> Employer	<b>ADMINISTRATIVE LAW JUDGE DECISION</b>
	<b>OC: 12/24/06 R: 01</b> <b>Claimant: Respondent (2)</b>

Section 96.4-3 – Able and Available  
Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

Cadre Teleservices (employer) appealed a representative's January 26, 2007 decision (reference 01) that concluded Bertha Ritchart (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 20, 2007. The claimant did not provide a telephone number where she could be reached and, therefore, did not participate. The employer participated by Cheri Sturgill, Human Resources Manager.

**ISSUE:**

The issue is whether the claimant is available for work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 2, 2006, as a full-time telephone sales representative. The employer was closed for a system upgrade on December 26 and 27, 2006. The claimant requested time off on December 28 and 29, 2006, to go to Colorado on vacation. On January 1, 2007, the employer was closed for the holiday. The claimant filed for unemployment insurance benefits with an effective date of December 24, 2006.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant is not eligible to receive unemployment insurance benefits.

871 IAC 24.23(7) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(7) Where an individual devotes time and effort to becoming self-employed.

When an employee requests and is granted time off, she is considered to be unavailable for work. The claimant requested a reduction of her hours and the employer granted her request. The change in hours was initiated by the claimant. She is considered to be unavailable for work. The claimant is disqualified from receiving unemployment insurance benefits for the week ending December 30, 2006, due to her unavailability for work. The claimant is not eligible to receive unemployment insurance benefits for the week ending January 6, 2007, because she was not available for the majority of the work week.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

The claimant has received benefits in the amount of \$357.00 since filing her claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

**DECISION:**

The representative's January 26, 2007 decision (reference 01) is reversed. The claimant is disqualified from receiving unemployment insurance benefits because she was not available for work with the employer. The claimant is overpaid benefits in the amount of \$357.00.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs