

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHIRLEY K RICHARDS
Claimant

APPEAL NO. 06A-UI-10115-N

**ADMINISTRATIVE LAW JUDGE
DECISION**

JAI SHRI INC
FAIRFIELD INN
Employer

OC: 09-10-05 R: 03
Claimant: Respondent (2)

Section 96.4-3 – Availability for Work
Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated October 9, 2006, reference 01, which allowed benefits finding the claimant was still employed on a part-time on-call basis and was available for work. After due notice was issued, a hearing was held in Ottumwa, Iowa on November 7, 2006. Although duly notified, Ms. Richards did not participate. The employer participated by Megan Borowski, Assistant General Manager and Tammy Clifton, General Manager. Employer's Exhibits One through Eight were received into evidence.

ISSUES:

At issue in this matter is whether Ms. Richards was available for work. At issue is whether the claimant voluntarily left employment with good cause for reasons attributable to the employer. At issue is whether the claimant received an overpayment of unemployment insurance benefits.

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. Richards was employed by the captioned company doing business as Fairfield Inn from August 9, 2002 until October 26, 2006, when she voluntarily left employment. The claimant was hired in the position of part-time laundry employee and was paid by the hour. Her immediate supervisors were Megan Borowski and Tammy Clifton.

Ms. Richards voluntarily left her employment with the Fairfield Inn on October 26, 2006 when she turned in her uniform without advanced notice and specifically indicated that she was "quitting" her job. Work continued to be available to the claimant on the part-time capacity that she had accepted for an extended period of time.

When hired, Ms. Richards was employed on a part-time basis on a rotating shift working three days one week and four days the next. The claimant's shifts required rotating weekend work

also. After repeated warnings for failing to report for scheduled work, Ms. Richards' hours were reduced to one day per week effective August 8, 2006. The employer had noted a pattern of the claimant calling the night auditor to determine how many rooms had been rented and the employer noted that if a number of rooms had been rented, the claimant would not report for her part-time shift the following day but instead would call in. Although the claimant has been absent from her scheduled work days on numerous occasions, she supplied only three generic doctor's notes indicating in effect that she had been seen at a clinic. On one occasion, the company's assistant manager encountered the claimant shopping at a local store the morning she had called in too ill to report for work. Ms. Richards had also left work without notice or authorization on one occasion and had been warned for tardiness and failure to provide notification to the proper management individual.

At the time the claimant was reduced to one working day per week as a disciplinary measure, Ms. Richards did not object to the change. Although only scheduled to work one day per week, the claimant continued to fail to report for work on a number of occasions continuing to follow the same pattern although she had been warned. At the time the claimant chose to leave employment on October 26, 2006, work continued to be available to her one day per week as agreed by the parties when the claimant was issued her disciplinary reduction of work days. Ms. Richards had been informed that her work hours would be increased if she began to report for scheduled work on a regular basis.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.3-6 provides:

6. Part-time workers.

a. As used in this subsection the term "part-time worker" means an individual whose normal work is in an occupation in which the individual's services are not required for the customary scheduled full-time hours prevailing in the establishment in which the individual is employed, or who, owing to personal circumstances, does not customarily work the customary scheduled full-time hours prevailing in the establishment in which the individual is employed.

b. The director shall prescribe fair and reasonable general rules applicable to part-time workers, for determining their full-time weekly wage, and the total wages in employment by employers required to qualify such workers for benefits.

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

The evidence establishes that Ms. Richards was hired to work on a part-time basis working alternate days and weekends for the captioned employer. Subsequently the claimant's working hours were reduced to one day per week as a disciplinary measure based upon what the employer reasonably considered to be a pattern on the part of the claimant of calling in to avoid work on days that her laundry duties might be more substantial. The evidence established that the claimant routinely called a night auditor to determine how many rooms had been rented and

then would call in indicating that she could not work if a substantial number of rooms had been rented and laundry service would be required to service those rooms the following day.

The claimant avoided speaking directly to the facilities manager or assistant manager when calling off work although she had been specifically instructed to speak to management. Ms. Richards had been observed in town conducting business on the mornings after calling in indicating she was too ill to work and on at least one occasion had left work after completing minimal duties without notice or authorization of company management. Although the claimant had been repeatedly warned by the company, her pattern of avoiding work when she was needed most by the employer continued.

After being reduced to one day per week the claimant continued the same pattern of calling off work for reasons the employer felt were not credible. The hearing record establishes that Ms. Richards chose to voluntarily relinquish her position with the company on October 26, 2006 for unknown reasons.

In order to be eligible to receive unemployment insurance benefits a claimant must be available for work and earnest and actively seeking work. The individual bears the burden of establishing that he or she is able to work, available for work and earnestly and actively seeking work. Although given the opportunity to appear personally and provide sworn testimony, Ms. Richards declined to do so. The administrative law judge finds based upon the hearing record, the claimant was not available for work and was not earnestly and actively making herself available for work offered by this employer. The claimant, thus, is ineligible to receive unemployment insurance benefits until she makes herself available for work.

The evidence also establishes the claimant voluntarily left employment and has not established good cause for leaving for reasons that are attributable to the employer. The employer's reduction of working hours was the result of the claimant's own actions and failure to report on an ongoing basis for available employment. The claimant was aware that her part-time hours would be increased as soon as she showed a reasonable level of dependability however the claimant did not do so prior to choosing to leave her employment without advanced notice.

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 to which she is not entitled.

The administrative law judge holds the claimant is overpaid unemployment insurance benefits in the amount of \$343.00 pursuant to Iowa Code section 96.3-7 because a decision has

determined the claimant is ineligible to receive benefits due to being unavailable for work within the meaning of the Iowa Employment Security Law.

DECISION:

The agency representative's decision dated October 9, 2006, reference 01, is reversed. The claimant was not available for work and is ineligible to receive unemployment insurance benefits. The claimant voluntarily left her employment without good cause under disqualifying conditions. Unemployment insurance benefits shall be withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible. The claimant has been overpaid unemployment insurance benefits in the amount of \$343.00.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs