

**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**

**CHARRON COLE
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MIDDLETOWN IA 52638-9702**

**WINEGARD CO
C/o UNEMPLOYMENT SERVICES LLC
PO BOX 749000
ARVADA CO 80006-9000**

**Appeal Number: 06A-UI-05806-BT
OC: 04/23/06 R: 04
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 for Work
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Winegard Company (employer) appealed an unemployment insurance decision dated May 24, 2006, reference 01, which held that Charron Cole (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 21, 2006. The claimant participated in the hearing. The employer participated through Carl Ingerson, Sales/Factory Manager and Craig Cree, Employer Representative.

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 employed as a full-time assembler in October 1998 and continues to be employed in that same capacity with no change in her hours or wages. The employer uses a lot of contract labor, but its policy and practice is that no Winegard employee ever has to go home when the work is slow. Sometimes the employer may ask for volunteers to leave early but if an employee wants to work, there is always work to be done. The claimant contends she was told there was no work for two to three days during the week ending April 29, 2006.

The claimant filed a claim for unemployment insurance benefits effective April 23, 2006 and has received benefits after her separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant is able and available for work. For the reasons that follow, the administrative law judge concludes that the claimant was not able and available for work for the week ending April 29, 2006.

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".

871 IAC 24.23(16)(29) provides:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

The claimant has the burden of proof in establishing her ability and availability for work. Davoren v. Iowa Employment Security Commission, 277 N.W.2d 602 (Iowa 1979). She has worked for this employer for eight years and is fully aware of the employer's policy of always allowing Winegard employees to work full-time hours even when work is slow. The claimant's contention that she was not given a choice to work is not credible. Had she wanted to work the

entire week, she could have worked. Since the claimant was not able and available to work during the week ending April 29, 2006, benefits are denied.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated May 24, 2006, reference 01, is reversed. The claimant did not meet the availability requirements for the week ending April 29, 2006 and is, therefore, not qualified for benefits. The claimant is overpaid benefits in the amount of \$157.00.

sdb/cs