

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WENDI M VESSEY
Claimant

APPEAL NO. 10A-UI-08159-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**MAHARISHI UNIVERSITY OF
MANAGEMENT**
Employer

OC: 01/03/10
Claimant: Respondent (4)

Iowa Code § 96.4(3) – Able & Available
Iowa Code § 96.7(2)(a)(2) – Still Employed - Same Hours, Same Wages
871 IAC 23.43(4)(a) – Part-time Supplemental Employment

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated May 27, 2010, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on July 22, 2010. Claimant participated. Employer participated by Dale Monson, administrative director. The record consists of the testimony of Wendi Vessey and the testimony of Dale Monson. Official notice is taken of agency records.

ISSUE:

Whether the claimant continues in the part-time, supplemental employment under the same conditions as existed prior to the filing of her claim for benefits.

Whether the employer may be relieved of liability for benefits paid to the claimant.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact: The claimant established a claim for unemployment insurance benefits that was effective January 3, 2010. The application for benefits was prompted by a lay-off from the claimant's full-time employment at Vessey-Vastu Builders. The claimant worked part-time as a lunch monitor for Maharishi University of Management at the same time she worked full-time at Vessy-Vastu Builders. Ms. Spencer commenced the part-time employment in September, 2008 and continued in the employment under the same conditions at the time she filed her claim for benefits.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 § 96.7-2-a(2) provides:

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.

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....

Based on the statute and administrative rules cited above, the administrative law judge concludes that the employer should be relieved of benefit charges so long as the claimant continues in the part-time employment. If the claimant separates from the employment, the employer should immediately notify Iowa Workforce Development so that issues related to the separation may be addressed at that time. The claimant continues to be eligible for benefits, provided she is otherwise eligible. The employer's account will not be charged.

DECISION:

The Agency representative's May 27, 2010, reference 01, is amended as follows. The claimant continues in the part-time, supplemental employment and has not separated from the employment. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account will not be charged for benefits so long as the claimant continues in the part-time, supplemental employment.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs