

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

RITA M HOLTZ
101 – 8TH ST
WEST POINT IA 52656-9772

WEST POINT CARE CENTER INC
PO BOX 38
WEST POINT IA 52656

Appeal Number: 06A-UI-07847-DWT
OC: 06/11/06 R: 04
Claimant: Respondent (4)

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 to and Available for Work

STATEMENT OF THE CASE:

West Point Care Center, Inc. (employer) appealed a representative's July 31, 2006 decision (reference 02) that concluded Rita M. Holtz (claimant) was eligible to receive unemployment insurance benefits, and the employer's account would not be relieved from charge because the claimant was not working in the same pattern as she did during her base period. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 21, 2006. The claimant participated in the hearing. Teresa Staub, the assistant administrator, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, 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 receive partial unemployment benefits after her seasonal job ends but she continues to work a part-time job?

Is the part-time employer's account subject to charge?

FINDINGS OF FACT:

The claimant started working for the employer in February 2003. The claimant has always worked part time or a minimum of 13 hours a week for the employer. The claimant also works for Denny's Greenhouse from February through Memorial Day. Last year when the claimant's greenhouse job ended, she established a claim for unemployment insurance benefits and was held eligible to receive partial benefits. The employer's account was not charged.

The claimant established a new benefit year during the week of June 11, 2006, after her seasonal greenhouse job again ended. The claimant continues to work an average of 13.5 hours a week for the employer. During the week ending June 24, the claimant only worked 10.25 hours because she took off a day or two off to visit her son who lives 300 miles from the claimant.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for benefits, she must be able to and available for work. Iowa Code § 96.4-3. Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed. 871 IAC 24.23(26).

The claimant's situation is unique in that her part-time employment with the employer is all year. The claimant may work full time for Denny's Greenhouse, but this is only seasonal work from February through Memorial Day. If the claimant only worked for the employer, she would not be eligible to receive benefits, because she still works for the employer in the same pattern she has always worked for the employer.

If the claimant did not work for the employer and only worked her seasonal job, she would be qualified to receive benefits when she established her claim in June because she had been laid off from work. There are no laws or regulations that specifically address this situation. Since the claimant's employment with the employer has not changed and the claimant still works for the employer, the employer's account will not be charged.

The claimant's maximum weekly benefit amount is based on wage credits she earned from the employer and Denny's Greenhouse. The claimant has been laid off from Denny's Greenhouse, Iowa does not have any seasonal employee exception, and the claimant is able and available to work for other employers. As a result of these factors, the claimant is eligible to receive unemployment insurance benefits as of June 11, 2006.

DECISION:

The representative's July 31, 2006 decision (reference 02) is modified in the employer's favor. The claimant is eligible to receive unemployment insurance benefits because she was laid off from another job and is still able to and available for work with other employers. The employer's account will not be charged because the claimant continues to work the same hours as she has always worked for the employer.

dlw/kjw