

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BROOKE L CHAMPAGNE**  
Claimant

**APPEAL NO. 09A-UI-06764-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GATOR'S GRILL & SPIRITS**  
Employer

**OC: 03/29/09**  
**Claimant: Respondent (3)**

Section 96.4(3) – Able and Available  
Section 96.3(7) – Recovery of Overpayments

**STATEMENT OF THE CASE:**

Gator's Grill & Spirits filed an appeal from a representative's decision dated April 28, 2009, reference 02, which held that Brooke Champagne was allowed benefits but that the employer was not entitled to relief from charges.. After due notice was issued, a hearing was held by telephone on May 28, 2009. Ms. Champagne participated personally. The employer participated by Dan Jensen, General Manager.

**ISSUE:**

At issue in this matter is whether Ms. Champagne has satisfied the availability requirements of the law since filing her claim effective March 29, 2009.

**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. Champagne began working for Gator's Grill & Spirits on December 26, 2006. She was hired to work approximately 20 hours each week as a food server. In June of 2008, she was placed on probation for 90 days as a result of her attendance. She was warned that her hours could be reduced if she had further attendance infractions. She completed the probation on September 10, 2008.

Just prior to March of 2009, Ms. Champagne was working four hours during each of three days a week. In mid-March, she was reduced to working only one four-hour shift per week. The reduction was not due to her attendance but to an unfavorable newspaper article about her. Because of the reduction in hours, she filed a claim for job insurance benefits effective March 29, 2009. She last performed services for the employer on April 22, 2009. She has not worked during the month of May because of a broken elbow.

Ms. Champagne was paid \$146.00 per week in job insurance benefits during the period from April 26 through May 23, 2009.

**REASONING AND CONCLUSIONS OF LAW:**

In order to receive job insurance benefits, an individual must be able to work and available for work. Iowa Code section 96.4(3). When Ms. Champagne filed her claim for benefits effective March 29, 2009, she was partially unemployed because the employer had reduced her hours. The reduction was not at her request and was not done as a disciplinary measure at that point. She remained available to work the same number of hours she worked prior to the reduction. Therefore, she satisfied the availability requirements of the law as of March 29, 2009. Because the reduction was the employer's unilateral decision, the employer is not entitled to relief from benefit charges.

Ms. Champagne last performed services for the employer on April 22. She found replacements for all of her shifts in May of 2009 as she could not work due to a broken elbow. Since she was unable to work, she is not entitled to benefits until she recovers from her injury. Therefore, benefits are denied effective April 26, 2009.

Ms. Champagne has received \$584.00 in benefits from April 26 through May 23, 2009. Based on the decision herein, the benefits now constitute an overpayment. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7).

**DECISION:**

The representative's decision dated April 28, 2009, reference 02, is hereby modified. Ms. Champagne is allowed benefits from March 29 through April 25, 2009 as she was available for work within the meaning of the law. Benefits are denied effective April 26, 2009 as she was not able to work. Benefits are withheld until she provides proof to her local office that she has recovered from her injury and has been released to work.

---

Carolyn F. Coleman  
Administrative Law Judge

---

Decision Dated and Mailed

cfc/css