

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KRISTIN L PICKETT

Claimant

APPEAL NO. 07A-UI-01178-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE ALVERNO HEALTH CARE FACILITY

Employer

**OC: 12-31-06 R: 04
Claimant: Respondent (2)**

Section 96.4-3 – Able and Available
871 IAC 24.23(26) – Same Hours and Wages
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 26, 2007, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on February 19, 2007. The claimant did participate. The employer did participate through Laurie Hoyer, Laundry Supervisor.

ISSUES:

Is the claimant still employed at the same hours and wages?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a laundry aid part-time beginning June 19, 2002 through date of hearing, as the claimant remains employed.

The claimant was hired to fill in on nights and weekends when she was first hired as a high school student. In September 2006, the claimant asked to work only every other weekend on evening shifts to accommodate her college class schedule. The changes made to the claimant's work schedule were at her own request.

In January 2007, the claimant decided not to return to college and her schedule was again changed to accommodate her. The claimant is working Tuesday and Thursday evenings of every week. The claimant did not work on February 13 because the weather was bad and she did not want to come to work. She did not work on February 15 because she called in sick to work. The claimant is working at roughly the same hours per week as when she was hired. The claimant's hours were reduced to accommodate her class schedule at her request.

Claimant has received unemployment benefits since filing a claim with an effective date of December 31, 2006.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work.

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(26) provides:

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

(26) 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.

The only reason the claimant's hours were reduced was to accommodate her request that they be reduced to fit her college schedule. The claimant is still working a similar number of hours as when she was hired and for the same wages. The claimant cannot be found to be able to and available for work under these circumstances. Accordingly, 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 claimant's separation was disqualifying, benefits were paid to which claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The January 26, 2007, reference 01, decision is reversed. The claimant is not able to work and available for work effective December 31, 2006. Benefits are denied. Claimant is overpaid benefits in the amount of \$298.00.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css