

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHRYN E HOVET
Claimant

APPEAL NO. 11A-UI-11766-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA BOOK
Employer

OC: 07/24/11
Claimant: Appellant (4)

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant, Kathryn Hovet, filed an appeal from a decision dated August 30, 2011, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on September 28, 2011. The claimant participated on her own behalf. The employer, Iowa Book, participated by Office Manager Pat Brice and Human Resources Representative Patty Hopkins.

ISSUE:

The issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

Kathryn Hovet was employed by Iowa Book beginning January 6, 2006 as a part-time sales associate. She was not guaranteed any minimum number of hours per week or per pay period. The claimant was employed full-time at another company while she was employed by Iowa Book. That company laid her off, which prompted her to file for unemployment benefits effective July 24, 2011.

REASONING AND CONCLUSIONS OF LAW:

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".

Iowa Code section 96.7-2-a(2) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

However, 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. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

The claimant was hired as a part-time employee and remained in that capacity at the time she filed for unemployment benefits. Her base period wages were earned from Iowa Book as well as another full-time employer. Under the provisions of the above Administrative Code section, the claimant is eligible for benefits, provided she is otherwise qualified. The account of Iowa Book will not be charged with benefits paid to the claimant.

DECISION:

The representative's decision of August 30, 2011, reference 01, is modified in favor of the appellant. Kathryn Hovet is qualified for benefits provided she is otherwise eligible. The account of Iowa Book will not be charged with benefits paid to the claimant.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw