

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTINA A MASTIN

Claimant

APPEAL NO: 12A-UI-13429-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CENTRAL IOWA KFC INC

Employer

OC: 10/07/12

Claimant: Appellant (1)

Section 96.4-3 – Able and Available
Section 96.19-38 – Partial Unemployment
871 IAC 26.8(5) – Decision on the Record

STATEMENT OF THE CASE:

The claimant appealed a department decision dated October 30, 2012, reference 01, that held she did not meet the availability requirements of the law in order to receive partial unemployment on October 7, 2012, and benefits are denied. A telephone hearing was held on December 10, 2012. The claimant and employer did not participate.

ISSUES:

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

The issue is whether the claimant is partially unemployed.

FINDINGS OF FACT:

The administrative law judge having considered the evidence in the record, finds: The claimant began work on April 17, 2008 as a full-time team leader. The claimant requested work schedule changes due to child care issues that limited her availability for work.

Claimant failed to respond to the hearing notice. An employer representative called in after the time scheduled for the hearing, but agreed to have the decision made on the record.

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 96.19-38 provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which, while employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

An individual shall be deemed partially unemployed in any week in which the individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

871 IAC 26.8(3), (4) and (5) provide:

Withdrawals and postponements.

(3) If, due to emergency or other good cause, a party, having received due notice, is unable to attend a hearing or request postponement within the prescribed time, the presiding officer may, if no decision has been issued, reopen the record and, with notice to all parties, schedule another hearing. If a decision has been issued, the decision may be vacated upon the presiding officer's own motion or at the request of a party within 15 days after the mailing date of the decision and in the absence of an appeal to the employment appeal board of the department of inspections and appeals. If a decision is vacated, notice shall be given to all parties of a new hearing to be held and decided by another presiding officer. Once a decision has become final as provided by statute, the presiding officer has no jurisdiction to reopen the record or vacate the decision.

(4) A request to reopen a record or vacate a decision may be heard ex parte by the presiding officer. The granting or denial of such a request may be used as a grounds for appeal to the employment appeal board of the department of inspections and appeals upon the issuance of the presiding officer's final decision in the case.

(5) If good cause for postponement or reopening has not been shown, the presiding officer shall make a decision based upon whatever evidence is properly in the record.

The administrative law judge concludes the claimant does not meet the availability requirements of the law and partial unemployment benefits are denied as of October 7, 2012. The department fact-finding record contains information claimant put some limitations on her work availability due to child care issues and she failed to participate in this hearing to refute it.

DECISION:

The department decision dated October 30, 2012, reference 01, is affirmed. The claimant is not eligible for partial unemployment benefits effective October 7, 2012, as she does not meet the availability requirements of the law.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css