

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGELA M PETERSEN
Claimant

APPEAL NO: 11A-UI-01861-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WISE MOTELS INC
Employer

OC: 01/16/11
Claimant: Respondent (2/R)

Iowa Code § 96.4(3) – Able to and Available for Work

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's February 1, 2011 determination (reference 01) that held the claimant eligible to receive benefits and the employer's account subject to charge because the claimant was not working the same hours and wages she had been hired to work. The claimant participated in the hearing. Sue Shepherd, the manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant is not eligible to receive benefits as of January 16, 2011.

ISSUE:

Is the claimant eligible to receive partial benefits if she is not working the same hours and wages the employer hired her to work?

FINDINGS OF FACT:

The claimant started working for the employer in late October 1999. The employer hired her to work as a part-time housekeeper. During the winter months, business is slow and the claimant's hours have always been reduced, December through April. In 2010, the claimant worked anywhere from 2 to 9 hours a week during the slow season. During the busy season the claimant worked 7.5 to 12 hours a week.

The claimant established a claim for benefits during the week of January 16, 2011. Since the claimant has filed her claims she has worked an average of 9 hours every two weeks.

REASONING AND CONCLUSIONS OF LAW:

A regulation states that where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract of hire and is not working on a reduced workweek, the claimant cannot be considered partially unemployed. 871 IAC 24.23(26). This regulation applies when the employer is a base period employer. If a claimant has been working part time for a base period employer and files a claim for benefits when she still works

the same hours and wages she had been working, she is cannot be considered partially unemployed even if she monetarily eligible to receive benefits.

In this case, the employer is a base period employer so 871 IAC 24.23(26) applies. Since the claimant has only worked for the employer during her base period, the issue is whether she is working a reduced workweek during the slow season in 2011 when compared to the hours she worked during the slow season in 2010 or the same months. The facts do not establish the claimant is working a reduced workweek during the employer's slow season. Therefore, she cannot be considered partially unemployed and is not eligible to receive partial benefits. As of January 16, 2011, the claimant is not eligible to receive benefits.

An issue of overpayment will be remanded to the Claims Section to determine.

DECISION:

The representative's February 1, 2011 determination (reference 01) is reversed. The claimant is not eligible to receive benefits as of January 16, 2011, because she continues to work for the employer at the same hours and wages she has worked for the employer during the employer's slow season. Since the employer is a base period employer and the claimant continues to work the same hours and wages as she has in the past, the claimant cannot be considered partially unemployed. An issue of overpayment is Remanded to the Claims Section for benefits the claimant has received since January 16, 2011.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css