

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

XIOMARA T ESPARZA
Claimant

APPEAL NO: 15A-UI-01736-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC
Employer

OC: 01/04/15
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Availability for Work
871 IAC 24.23(26) – Still Employed at Same Hours

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's January 27, 2015 (reference 01) determination that denied the claimant benefits as of January 4, 2015 because she was not considered unemployed. The claimant participated at the March 10 hearing. Sarah Fiedler, a human resource generalist, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not eligible to receive benefits as of January 4, 2015.

ISSUE:

As of January 4, 2015, is the claimant eligible to receive benefits because she was unemployed or working reduced hours?

FINDINGS OF FACT:

The employer assigned the claimant to work at Winegarden, one of the employer's clients. This client was temporary shut down for the holidays from December 24, 2014 through January 4, 2015. As a result of the shutdown, the claimant was on a temporary layoff for about a week. The claimant returned to working full time the week of January 5, 2015.

The claimant established a claim for benefits during the week of January 4, 2015. She did not file any weekly claims for benefits in January 2015.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for benefits, she must be able to and available for work. Iowa Code § 96.4(3). A claimant is considered unemployed in any week she does not earn any wages and performs no services. Iowa Code § 96.19(38)a.

The claimant was on a temporary layoff from December 24, 2014 through January 5, 2015. The claimant may have been eligible to receive benefits for the week ending December 27. The claimant was unemployed because she was on a layoff the week ending January 3, 2015.

She may have been eligible to receive benefits for the week of December 28, 2014. The problem in this case is that the claimant did not establish a claim for benefits until the week of January 4, the week she returned to full time work. Therefore, as of January 4, 2015 the claimant was again working full time and is not eligible to receive benefits.

If the claimant had established a claim for benefits during the week of December 21 and had filed weekly claims for the weeks ending December 27, 2014 and January 3, 2015, she may have received benefits. Since she did not establish a claim or file weekly claims for these weeks, the issue at this hearing does not allow this administrative law judge to backdate her claim or to consider giving her retroactive benefits.

(Note – the administrative law judge did not notice until writing the decision an issue of whether the claimant filed a timely appeal should have been noted on the hearing notice, but was not. Since the determination is affirmed and timeliness of appeal issue was not raised at the hearing, this issue is not addressed in this decision.)

DECISION:

The representative's January 27, 2015 (reference 01) determination is affirmed. As of January 4, 2015 the claimant returned to working full time after a temporary layoff. As a result, the claimant is not eligible to receive benefits as of January 4, 2015 because she was not unemployed.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/can