

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RUTH E MCELHANEY
Claimant

APPEAL NO. 09A-UI-00788-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CREATIVE LEARNING CENTER
Employer

**OC: 11/09/08 R: 04
Claimant: Respondent (1)**

Section 96.4-3 - Able to and Available for Work
Section 96.19-38-b - Eligibility for Partial Unemployment Insurance Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated January 15, 2009, reference 01, that concluded the claimant was eligible to receive partial unemployment insurance benefits and the employer's account was chargeable for benefits paid to the claimant since her hours had been reduced. A telephone hearing was held on February 5, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Mindy Chapman participated in the hearing on behalf of the employer. Official notice is taken of the Agency's records regarding the claimant's unemployment insurance claim, which show the wages during her base period were as follows—3rd quarter 2007: \$2657.48; 4th quarter 2007: \$2483.88; 1st quarter 2008: 3205.43; and 2nd quarter 2008: 3610.96, for a total of \$11,957.75. This averages \$229.96 per week. The claimant's wages per week after November 9 were as follows: \$68.00 (week ending November 15), \$125.00 (week ending November 22), \$141.00 (week ending November 29), \$210.00 (week ending December 6), \$43.00 (week ending December 13), \$119.00 (week ending December 20), \$36.00 (week ending December 27), \$116.00 (week ending January 3), \$99.00 (week ending January 10), and \$56.00 (week ending January 17). If a party objects to taking official notice of these facts, the objection must be submitted in writing no later than seven days after the date of this decision.

FINDINGS OF FACT:

The claimant began working part time as an assistant teacher in the employer preschool and daycare center November 10, 2005. The employer informs employees when they are hired that their hours and days of work would vary depending on the number of children in the center.

The claimant's hours were based on a schedule that could vary from week to week based on the number of the children.

During the fall of 2008, the claimant's hours were reduced due to a reduction in the number of children in the center.

As a result of the reduction in hours, the claimant filed a new claim for unemployment insurance benefits effective November 9, 2008. Her weekly benefit amount was determined to be

\$156.00. The wages during her base period were as follows—3rd quarter 2007: \$2657.48; 4th quarter 2007: \$2483.88; 1st quarter 2008: 3205.43; and 2nd quarter 2008: 3610.96, for a total of \$11,957.75. This averages \$229.96 per week or about 31 hours per week based on a rate of pay of \$7.25 per hour.

The claimant's wages per week after November 9 were as follows: \$68.00 (week ending November 15), \$125.00 (week ending November 22), \$141.00 (week ending November 29), \$210.00 (week ending December 6), \$43.00 (week ending December 13), \$119.00 (week ending December 20), \$36.00 (week ending December 27), \$116.00 (week ending January 3), \$99.00 (week ending January 10), and \$56.00 (week ending January 17).

The claimant has had weeks since filing the claim for unemployment insurance benefits in which she worked less than normal hours and had earnings less than her earnings allowance of \$171.00.

The employer has informed the claimant that she is going to be laid off on February 20, 2009.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was eligible for partial unemployment insurance benefits effective November 9, 2008. The claimant filed a claim requesting partial unemployment insurance benefits for the weeks in which her earnings were less than the weekly benefit amount.

Iowa Code section 96.3-3 provides:

3. Partial unemployment. An individual who is partially unemployed in any week as defined in section 96.19, subsection 38, paragraph "b", and who meets the conditions of eligibility for benefits shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. The benefits shall be rounded to the lower multiple of one dollar.

Iowa Code section 96.19-38-b provides in part:

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.

The preponderance of the evidence establishes the claimant's regular workweek at the point she filed her new claim was 31 hours per week. She was working less than that regular workweek due to a reduction in hours effective November 9, 2008, and she was entitled to partial unemployment insurance benefits since her earnings were less than her weekly benefit amount plus \$15.00.

The unemployment insurance law provides that an individual be able to and available for work. Iowa Code section 96.4-3. The claimant was able to and available to work and did not restrict the number of hours she was willing to work.

The final issue is whether the employer's account is subject to charge for benefits paid to the claimant.

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

(2) The amount of regular 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.

The employer's account is subject to charge for benefits because the employer did not provide the claimant with the same employment as provided during the base period.

DECISION:

The unemployment insurance decision dated January 15, 2009, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible. The employer's account will be subject to charge for benefits paid to the claimant.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs