

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAYNIE L BUEHL
Claimant

APPEAL NO. 10A-UI-13810-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAREWAY STORES INC
Employer

OC: 08/15/10
Claimant: Respondent (1)

Section 96.4-3 – Eligibility for Benefits
Section 96.19-38-b – Partial Unemployment

STATEMENT OF THE CASE:

Fareway Stores, Inc. filed a timely appeal from an unemployment insurance decision dated September 23, 2010, reference 01, that allowed benefits to Laynie L. Buehl. After due notice was issued, a telephone hearing was held November 9, 2010 with Ms. Buehl participating. Kim Garland participated for the employer.

ISSUE:

Is the claimant a partially unemployed individual who is eligible for unemployment insurance benefits?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Laynie L. Buehl has been a part-time bakery employee of Fareway Stores, Inc. since September of 2008. In 2009 she was scheduled to work an average of 26.18 hours up until the time she went on maternity leave. Since returning from maternity leave in early 2010 she has been scheduled for an average of 16.45 hours per week despite the fact that she has requested as many hours of work as possible. She was told by her manager that her hours were reduced because co-workers had said that she was not performing her job adequately. She has not received any counseling, coaching or warnings about her performance.

REASONING AND CONCLUSIONS OF LAW:

The question is whether Ms. Buehl is eligible to receive unemployment insurance benefits. She is.

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".

An individual is considered to be partially unemployed if the individual is working less than the individual's regular hours and is earning less than the individual's weekly benefit amount plus \$15.00. The evidence in this record persuades the administrative law judge that the claimant's hours have been reduced by 31 percent during 2010. The evidence does not establish that they have been reduced at her request or for documented disciplinary or performance issues. The administrative law judge concludes that the claimant is a partially unemployed individual who is eligible to receive unemployment insurance benefits. Since the employer is not providing the claimant with the same level of employment as during the claimant's base period, it cannot be relieved of charges for benefits.

DECISION:

The unemployment insurance decision dated September 23, 2010, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs