

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROSE CAMPBELL**

Claimant

**APPEAL NO: 12A-UI-02154-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**

Employer

**OC: 01/01/12**

**Claimant: Appellant (4)**

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

**STATEMENT OF THE CASE:**

Rose Campbell (claimant) appealed a representative's February 21, 2012 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits in conjunction with her employment with Casey's Marketing Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 20, 2012. The claimant participated in the hearing. Stacey Hansen appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Is the claimant employed by the employer for less than her usual hours and wages even though she remains able and available for work, and is she therefore eligible for full or partial unemployment insurance benefits?

**FINDINGS OF FACT:**

After a prior period of employment with the employer's predecessor owner beginning September 17, 2010, the claimant started working for the employer on July 12, 2011. She worked part time (about 30 hours per week) as a cashier.

In about October 2011 the claimant injured her back while at home. As a result, her doctor began giving her work restrictions, the most stringent of which was a note issued on December 22, 2011 which prohibited the claimant from stooping or twisting, which effectively prevented her from vacuuming, sweeping, and mopping, which were considered essential job functions. As a result, as of December 23 the employer placed the claimant on a medical leave of absence.

The claimant verbally informed the employer on March 1 that she had been released by her doctor, and she provided the employer a doctor's release on March 6, 2012 which did indicate that the claimant could return to work without any further work restrictions. The employer did not return the claimant to her regular hours after receiving that note because the employer had hired other employees to fill the hours the claimant had previously worked.

The claimant established an unemployment insurance benefit year effective January 1, 2012. Her weekly benefit amount was calculated to be \$130.00.

**REASONING AND CONCLUSIONS OF LAW:**

The unemployment insurance law provides that a claimant is deemed partially unemployment insurance benefits if she is not employed at her usual hours and wages and earns less than her weekly benefit amount plus \$15.00 in other employment. Iowa Code § 96.19-38-b. Beginning on or about December 23, 2011, the employer was not providing the claimant with substantially the same employment as it had previously provided.

However, implicit with the concept of allowing benefits for a claimant who is working fewer hours is that the reduction bringing the earned wages low enough to qualify for partial benefits has been because of the choice of the employer, not that the claimant is not able or willing to work the hours available to her. Rather, she must remain available for work on the same basis as when she was previously working. Iowa Code § 96.4-3; 871 IAC 22(2)(a). The reason the claimant had no earnings for the weeks between January 1 and March 3, 2012 was because she was not able and available her regular job duties due to a non-work related injury. She is thus ineligible for unemployment insurance benefits for that period. 871 IAC 24.23(29).

However, effective the benefit week beginning March 4, 2012 the claimant was again able and available for her regular job duties. The reason her earnings after that date were below the \$145.00 partial benefit were because the employer did not have hours to provide to her because it had hired other employees to cover the claimant's position. While this was a reasonable business decision on the part of the employer, it does not render the claimant ineligible to receive unemployment insurance benefits. Cf., 871 IAC 24.26(6)a. Consequently, as of March 4, 2012 the claimant is qualified to receive at least partial unemployment insurance benefits, provided she was otherwise eligible. To be eligible for benefits for any particular week, the claimant must file a weekly claim for that week reporting her wages from all employers earned (not paid) for that week; the amount of her eligibility will then be determined pursuant to the formula set out by the statute. 871 IAC 24.52(8); Iowa Code § 96.3-3.

**DECISION:**

The unemployment insurance decision dated February 21, 2012 (reference 01) is modified in favor of the claimant. The claimant is ineligible for partial unemployment insurance benefits for the period of January 1 through March 3, 2012. As of March 4, 2012 the claimant is eligible for partial unemployment insurance benefits, provided she is otherwise eligible,

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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