

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIMBERLY R GRADY
Claimant

APPEAL NO: 12A-UI-09204-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

APAC CUSTOMER SERVICES OF IOWA
Employer

OC: 07/31/11

Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

APAC Customer Services of Iowa (employer) appealed a representative's July 23, 2012 decision (reference 01) that concluded Kimberly R. Grady (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 22, 2012. The claimant failed to respond to the hearing notice and provide a telephone number at which she could be reached for the hearing and did not participate in the hearing. Rochelle Jordan appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was 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:

The claimant started working for the employer on October 20, 2008. She works full-time as a customer service representative at the employer's Cedar Rapids, Iowa, call center. She works five days a week, Tuesday through Saturday.

In the spring of 2012, there were weeks where the employer did not have full work available for the claimant, and she sought and received partial unemployment insurance benefits for those weeks. After working on June 8, the claimant was hospitalized and was not released by her doctor until June 20. She returned to work on June 21, a Thursday, and worked that day, June 22, and June 23. She has continued in her regular full-time employment since that point, at least as of the date of the hearing. The employer had full work available for the claimant both of these weeks.

The claimant filed weekly continued claims for the benefit week ending June 16, for which she reported no earned wages, and for the benefit week ending June 23, for which she reported earned wages of \$151.00, less than her weekly benefit amount of \$244.00 plus \$15.00. She received a full unemployment insurance benefit amount for the week ending June 16, and a partial benefit amount for the week ending June 23.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides that a claimant is deemed partially unemployed 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.

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). Unemployment insurance benefits are not intended to substitute for health or disability benefits. *White v. Employment Appeal Board*, 487 N.W.2d 342 (Iowa 1992). The reason the claimant's earnings for the weeks ending June 16 and June 23 were below the \$259.00 partial eligibility level is because she was not able and available to work the number of hours the employer had available to her, and she is thus ineligible for unemployment insurance benefits for that period. 871 IAC 24.23(29).

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment is remanded the Claims Section.

DECISION:

The unemployment insurance decision dated July 23, 2012 (reference 01) is reversed. The claimant is not eligible for partial unemployment insurance benefits for the period of June 10 through June 23, 2012. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw