

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BARBARA A PHILLIPS

Claimant

APPEAL NO: 15A-UI-00082-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DIVERSIFIED SERVICES FOR INDUSTRY

Employer

OC: 11/23/14

Claimant: Appellant (5)

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

STATEMENT OF THE CASE:

Barbara A. Phillips (claimant) appealed a representative's December 24, 2014 decision (reference 02) that concluded she was not 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 January 29, 2015. This appeal was consolidated for hearing with one related appeal, 15A-UI-00083-DT. The claimant participated in the hearing. John O'Fallon, representative, appeared on behalf of Diversified Services for Industry (employer) and presented testimony from two other witnesses, Beth Kirchner and Penny Johnston. 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:

Was the claimant employed by the employer for less than her usual hours and wages for the benefit week ending November 29, 2014 even though she remained able and available for work, and is she therefore eligible for full or partial unemployment insurance benefits for that week?

FINDINGS OF FACT:

The claimant started working for the employer on February 27, 2012. She works part time as a day porter at the employer's Muscatine, Iowa headquarters. She normally works from about 9:00 a.m. to about 2:30 p.m. Monday through Friday.

The claimant worked generally her regular schedule on the Monday through Wednesday November 24 through November 26. She did not work on Thursday, November 27, as it was Thanksgiving and the employer was not open and no work was available for her. She again did not work on Friday, November 28, but while there was no one else who worked that day in the building claimant normally worked, the employer's office was open that day and work would have been available to her had she indicated she wished to work. However, she had previously advised Johnston, the area operations manager, that she was going to go shopping that day.

The claimant established an unemployment insurance benefit year effective November 23, 2014. Her weekly benefit amount was calculated to be \$151.00, and her earnings limit was therefore \$166.00. She only filed one weekly continued claim, for the week ending November 29, for which she reported wages in the amount of \$157.00.

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.

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; Rule 871 IAC 22(2)(a). A substantial reason the claimant's earnings for the week ending November 29, 2014 were below the \$166.00 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 week. Rule 871 IAC 24.23(29).

DECISION:

The unemployment insurance decision dated December 24, 2014 (reference 02) is modified with no effect on the parties. The claimant is not eligible for partial unemployment insurance benefits for the week ending November 29, 2014. Any future eligibility will be determined based upon the claimant's status at that time.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs