

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIELLE L LAFOLLETTE
Claimant

APPEAL NO. 10A-UI-15348-ST

**ADMINISTRATIVE LAW JUDGE
NUNC PRO TUNC DECISION**

DM SERVICES INC
Employer

**OC: 09/26/10
Claimant: Appellant (4)**

Section 96.4-3 – Able and Available
Section 96.19-38 – Partial Unemployment

STATEMENT OF THE CASE:

The claimant appealed a department decision dated November 3, 2010, reference 02, that held she was not eligible for benefits effective October 17, 2010, because she did not meet the availability requirements of the law. A telephone hearing was held on December 21, 2010. The claimant participated. Dana Fritsche participated for the employer.

ISSUES:

Whether the claimant is able and available for work.

Whether the claimant is partially unemployed.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant began employment on June 27, 2007, and she was working about 30 hours a week as a credit analyst/collector. The claimant was subject to a work slowdown in late September 2010, and there were weeks where she would be sent home rather than work her scheduled hours. She was earning \$9.50 an hour and her average weekly wage for the employer during her base period is \$425.76.

The claimant was scheduled for 27 hours the week ending October 2, but was sent home a total of 5.5 hours. The claimant worked less than her scheduled hours through the week ending October 30, and she ceased claiming benefits after that period.

REASONING AND CONCLUSIONS OF LAW:

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".

Iowa Code section 96.19-38 provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

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.

An individual shall be deemed partially unemployed in any week in which the individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

The administrative law judge concludes that the claimant was able and available for work-scheduled hours beginning September 26, 2010, and she is allowed partial unemployment benefits in any workweek where she works less than her schedule in accordance with the availability requirements of the law.

The claimant's employment was subject to a work slowdown where the employer sent her home, which caused her to work less than what she had been performing for the employer. The claimant is entitled to partial unemployment benefits.

DECISION:

The department decision dated November 3, 2010, reference 02, is modified. The claimant is eligible for partial unemployment benefits effective September 26, 2010, as she was able and available for all scheduled work.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw