

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CANDICE T CLONTZ
Claimant

APPEAL NO: 11A-UI-16412-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

DR MARK M ZIMMER PC
Employer

**OC: 11/27/11
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant appealed a department decision dated December 21, 2010, reference 01, that held she is not eligible for benefits effective November 27, 2011, because she is still employed in the same job at the same hours. A telephone hearing was held on January 25, 2012. The claimant participated. Dr. Mark Zimmer, owner, 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 has worked as a part-time office assistant throughout the course of her employment from August 13, 2007 to the date of this hearing. She most recently has averaged about 29 hours a week, and is paid \$10 an hour.

Claimant lost a full-time job at Hometown Laundry in December 2009, and she has received benefits from this unemployment claim. The department record shows that all wage credits claimant has earned during the base period (3/2010 to 2/2011) of her November 2011 unemployment claim are from part-time employment with the employer. Claimant is still searching for full-time work. Her UI claim weekly benefit amount is \$183.

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 is not eligible for partial unemployment benefits on her current claim, because she is still working the same part-time job at the same hours as she has during her base period.

The claimant is beyond the eligibility period for receiving any benefit from the December 2009 Hometown Laundry closing. Her recent unemployment claim is based solely on her part-time wages earned with the employer; and, because there has been no substantial reduction in hours, she may not be considered partially unemployed. In addition, the part-time wages significantly exceed her \$183 WBA, which means she is not eligible due to excessive earnings.

DECISION:

The department decision dated December 21, 2011, reference 01, is affirmed. The claimant is not ineligible for partial unemployment benefits effective November 27, 2011, because she does not meet the definition of being partially unemployed.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw