

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FERN L TODTZ

Claimant

APPEAL NO. 13A-UI-12347-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CLINTON COUNTY COURTHOUSE

Employer

OC: 10/06/13

Claimant: Appellant (1-R)

Section 96.4-3 - Able to and Available for Work

Section 96.19-38-b - Eligibility for Partial Unemployment Insurance Benefits

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated October 28, 2013, reference 01, that concluded she was working the same hours and wages as her original contract of hire and could not be considered partially unemployed. A telephone hearing was held on November 26, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Jill McDonald participated in the hearing on behalf of the employer. Official notice is taken of the Agency's records regarding the claimant's unemployment insurance claim, which show the claimant's base period was from July 1, 2012, through June 30, 2013. If a party objects to taking official notice of these facts, the objection must be submitted in writing no later than seven days after the date of this decision.

ISSUES:

Is the claimant eligible for partial unemployment insurance benefits?

Was the claimant able to and available for work?

FINDINGS OF FACT:

The claimant has worked for several years as a temporary employee working on-call when the employer needed her. In August 2012 she was hired as a switchboard operator, and in January 2013, as a receptionist. The work was on-call work when the employer needed a replacement for a regular employee. In July 2013 the claimant was offered and accepted a job with set hours of working as a receptionist for eight hours every Friday. In addition, she worked on-call, when the employer needed a replacement for a regular employee. The employer has not reduced the claimant's hours, and she is working the same hours and at the same wages as she worked in the past.

The claimant filed a new claim for unemployment insurance benefits effective October 6, 2013, because her previous benefit year had expired. Her base period was from July 2012 through June 2013. When she filed that claim, her base-period wages were from her on-call employment with the employer and her work for a temporary employment company, Clinton Staffing Company. Her weekly benefit amount was determined to be \$179.

On November 29, 2013, the employer eliminated the claimant's part-time job.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was eligible for partial unemployment insurance benefits effective October 6, 2013.

Iowa Code § 96.19-38-b provides in part:

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.

871 IAC 24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

The claimant cannot be considered partially unemployed as of October 6, 2013. As of that date, she had not separated from the employer and her hours had not been reduced. She is ineligible for benefits effective October 6, 2013.

During the hearing, the claimant and employer testified that the claimant's position was going to be eliminated effective November 29, 2013. The issue of whether the claimant is eligible for benefits effective November 29, 2013, is remanded to the Agency.

DECISION:

The unemployment insurance decision dated October 28, 2013, reference 01, is affirmed. The claimant was ineligible for benefits effective October 6, 2013. The issue of whether she is eligible for benefits effective November 29, 2013, is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs