

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

KATHLEEN L BUEHRIG
2750 – 3RD AVE
MARION IA 52302

TEP INC
c/o THOMAS E PITLIK
CEDAR RAPIDS BOWLING CTR
265 BLAIRS FERRY RD NE
CEDAR RAPIDS IA 52402-1601

Appeal Number: 05A-UI-06016-DT
OC: 05/01/05 R: 03
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

TEP, Inc. doing business as Cedar Rapids Bowling Center (employer) appealed a representative's May 27, 2005 decision (reference 03) that concluded Kathleen L. Buehrig (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 June 27, 2005. 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. Dave Wolfe 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.

FINDINGS OF FACT:

The claimant started working for the employer in August 2004. She initially worked part time approximately 35 to 40 hours per week as a bartender. Until May 1, 2005, her usual work schedule was from approximately 4:00 p.m. to 12:00 a.m. five nights per week. As of May 1, her work schedule was cut back to approximately 8:30 p.m. to 12:00 a.m. five nights per week, or about 17.5 hours per week. The reduction in her hours was at least in part due to the employer's temporary loss of its liquor license. The license was reinstated as of June 1, 2005, and the claimant's hours were partially restored so that as of the date of the hearing she is working approximately 6:30 p.m. to 12:00 a.m. five nights per week, or about 27.5 hours per week. Her hours were not fully restored due to the summer business being lighter.

The claimant also had other employment with another employer which she lost on or about May 1, 2005. The claimant established an unemployment insurance benefit year effective May 1, 2005. Her weekly benefit amount was calculated to be \$272.00. She has been filing weekly claims reporting some wages and receiving partial unemployment insurance benefits. She may have also obtained supplemental employment from yet a third employer.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is eligible for partial unemployment insurance benefits. 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 (\$287.00) in all her employment. Iowa Code section 96.19-38-b.

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.

Beginning on or about May 1, 2005, the employer was not providing the claimant with substantially the same employment as it provided during her base period. Consequently, the claimant is qualified to receive partial unemployment insurance benefits upon the filing of her claim effective May 1, 2005, provided she was otherwise eligible. Should the employer return the claimant to her prior hours and wages, the employer can be relieved of charges but the claimant could still retain some eligibility for partial unemployment insurance benefits for weeks her wages are less than \$287.00. 871 IAC 23.43(4)a.

DECISION:

The unemployment insurance decision dated May 27, 2005 (reference 03) is affirmed. The claimant is eligible for partial unemployment insurance benefits beginning May 1, 2005.

ld/pjs