

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

LINDA D KENNEL
1435 ARTHUR AVE
DES MOINES IA 50316

GORDMAN'S
PO BOX 6007
OMAHA NE 68106

Appeal Number: 05A-UI-03098-DT
OC: 02/06/05 R: 02
Claimant: Appellant (2)

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:

Linda D. Kennel (claimant) appealed a representative's March 15, 2005 decision (reference 01) that concluded she was not qualified to receive partial unemployment insurance benefits in conjunction with her employment with Gordman's (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 15, 2005. The claimant participated in the hearing. Theresa Baez of TALX UCM Services appeared on the employer's behalf and presented testimony from one witness, Christy Fontana. 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.

FINDINGS OF FACT:

The claimant started working for the employer on October 3, 2003. She works part time at the employer's Des Moines, Iowa store. Her hours can vary depending on the employer's seasonal needs. Her hourly wage as of January 1, 2004 was \$7.00; as of April 3, 2004 it was \$7.35; and as of October 3, 2004 it was \$7.75, where it remained through the date of the hearing. During the first quarter of 2004, the employer reported paying the claimant gross wages in the amount of \$2,045.00; during the second quarter of 2004, \$2,353.00; during the third quarter of 2004, \$2,504.00, and during the fourth quarter 2004, \$3,381.00.

When in the first quarter of 2005 the claimant's hours began to drop from the prior quarter, she established an unemployment insurance benefit year effective February 6, 2005. Her weekly benefit amount, based on the wages of the high quarter of her base period, was calculated to be \$108.00, and her earnings limit was set at \$123.00 (\$108.00 + \$15.00). Since establishing her claim, she has filed weekly claims reporting her wages earned for each week, and for some weeks received partial unemployment insurance benefits.

For the first quarter of 2004, the claimant averaged 22.8 hours per week ($(\$2,045.00/\$7.00)/13$ weeks). For the second quarter of 2004, the claimant averaged 24.6 hours per week ($(\$2,353.00/\$7.35)/13$ weeks). In the third quarter 2004, she averaged 26.2 hours per week ($(\$2,504.00/\$7.35)/13$ weeks), and in the fourth quarter 2004, she averaged 33.6 hours per week ($(\$3,381.00/\$7.75)/13$ weeks). In the first quarter 2005, there were weeks in which the claimant worked less than 22.8 hours per week (weekly reported wage/\$7.75). For example, for the week ending March 5, 2005, the claimant reported wages of \$70.00, and therefore worked only approximately nine hours ($\$70.00/\7.75).

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is eligible for partial unemployment insurance benefits and the employer's account subject to charge.

Iowa Code Section 96.19-38-b provides in pertinent 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.

871 IAC 23.43(4)a provides in part:

- (4) Supplemental employment.

- a. An individual, who has been separated with cause attributable to the regular employer and who remains in the employ of the individual's part-time, base period employer, continues to be eligible for benefits as long as the individual is receiving the same employment from the part-time employer that the individual received during the base period. The part-time employer's account, including the reimbursable employer's account, may be relieved of benefit charges....

There have been weeks in which the employer was not providing the same level of employment as had previously been established. Consequently, the claimant is qualified to receive unemployment insurance benefits, provided she was otherwise eligible, for weeks in the first

quarter where she is not scheduled for at least 22.8 hours (earning at least \$176.70), and weeks in the second quarter where she is not scheduled for at least 24.6 hours (earning \$190.65), where her earnings also do not exceed \$123.00. The employer is subject to charge for benefits paid to the claimant for periods it does not provide the claimant with the same part-time employment it provided during her base-period. 871 IAC 23.43(4)a.

DECISION:

The unemployment insurance decision dated March 15, 2005 (reference 01) is reversed. The claimant is eligible for partial unemployment insurance benefits under the conditions set out above, provided she is otherwise eligible, and the employer's account is exempt from charge for benefits paid to the claimant.

ld/s