

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER E DVORAK
Claimant

APPEAL NO: 14A-UI-05601-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NPC INTERNATIONAL INC
Employer

**OC: 04/20/14
Claimant: Respondent (1)**

Iowa Code § 96.19(38)b – Partially Unemployed

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's May 21, 2014 determination (reference 01) that held the claimant eligible to receive partial benefits as of April 20, 2014, because she was working reduced hours. The claimant participated at the June 24 hearing. Cheryl Demaris and Karissa Mentzer, the general manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant was working reduced hours and is eligible to receive partial unemployment insurance benefits as of April 20 and any week she earns gross wages of \$205 or less.

ISSUE:

As of April 20, 2014, is the claimant eligible to receive partial unemployment insurance benefits?

FINDINGS OF FACT:

The employer hired the claimant in September 2012 to work as a part time delivery driver. In 2013, the claimant worked primarily as a manager. The employer scheduled her to work full time hours. As a manager, the claimant worked an average of 35 hours a week and earned \$8.50 an hour.

In mid-April 2014, the claimant learned the employer would no longer schedule her to work as a manager. Mentzer told the claimant that because she had been calling off when scheduled to work as a manager; she would no longer be scheduled a manager's hours. Instead, the employer would schedule her to work as a driver. As a driver, the claimant's hours were reduced and her hourly wage was lower. The employer did not give the claimant any warning that her full-time manager's hours were in jeopardy when she notified the employer she was unable to work at various times.

The claimant established a claim for benefits during the week of April 20, 2014. Her maximum weekly benefit amount is \$190. Her base period on this claim is January 1 through December 31, 2013. She filed claims and received benefits as follows:

Week ending	Wages Reported	Benefits Paid
04/26/14	\$133	\$104
05/03/14	149	88
05/10/14	107	130
05/17/14	120	117
05/24/14	180	57
05/31/14	220	00

The claimant called in and reported she was unable to work as a manager on April 21 for a 9 a.m. to 5 p.m. shift; she called and reported she was unable to work as a driver on April 23 for a 5 to 8:30 p.m. shift; the claimant did not work as scheduled on May 10 and 17 from 5 to 10 p.m.; and she called in and reported she was unable to work on May 20, 21 from 5 to 10 p.m. and on May 24 from 4:30 to 11 p.m.

The claimant started another job on May 11. This limited her availability to working only on Friday and Saturday nights. The wages the claimant reported for the weeks ending April 26 through May 31 were from both the employer and her new employer.

REASONING AND CONCLUSIONS OF LAW:

When a claimant is still employed in a part-time job at the same hours and wages and is not working a reduced workweek, the claimant cannot be considered partially unemployed. 871 IAC 24.23(26). A claimant is considered partially unemployed when working at regular job; but works less than the regular hours and earns less than her claimant's maximum weekly benefit amount plus \$15. Iowa Code § 96.19(38)b.

The evidence establishes the claimant worked full time hours for the employer during her base period, the year of 2013, as a full-time manager. The claimant did not file a claim for benefits until the employer reduced her hours and wages on April 23, 2014. Since the claimant was working a reduced work week as of April 23, she is eligible to receive benefits for weeks in which she earns gross wages of \$205 or less.

Even though the claimant called off during some scheduled shifts after April 23, she was still available for work the majority of the weeks ending April 26 through May 24, 2014.

While the employer may have justifiable business reasons for changing the claimant's work hours and duties, the employer reduced her work hours and wages. As a result, as of April 20, the claimant is eligible to receive partial benefits for week she earns gross wages of \$205 or less. The claimant has not been overpaid any benefits she received since April 20, 2014,

DECISION:

The representative's May 21, 2014 determination (reference 01) is affirmed. As of April 20, 2014, the claimant is eligible to receive benefits for any week she earned gross wages of \$205 or less. The claimant is legally entitled to receive benefits for the weeks ending April 26 through May 24, 2014,

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs