

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAURA L RIEDL
Claimant

APPEAL NO. 09A-EUCU-00504-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**L A LEASING INC
SEDONA STAFFING**
Employer

**Original Claim: 10/26/09
Claimant: Appellant (4-R)**

Iowa Code section 96.4(3) – Able & Available
Iowa Code section 96.19(38)(b) – Partial Unemployment
Iowa Code section 96.7(2) – Employer Liability

STATEMENT OF THE CASE:

Laura Riedl filed a timely appeal from the November 25 2009, reference 01, decision that denied benefits effective September 27, 2009, based on an Agency conclusion that she was not partially unemployed. After due notice was issued, a hearing was held on January 12, 2010. Ms. Riedl participated. Chad Baker, Workers' Compensation Administrator, represented the employer and presented testimony through Rae Ann Parks, Accounts Coordinator.

ISSUES:

Whether Ms. Riedl has met the work availability requirements of Iowa Code section 96.4(3) since she established the additional claim for benefits that was effective September 27, 2009.

Whether Ms. Riedl was partially unemployed from September 27, 2009, the effective date of her additional claim, through the benefit week that ended December 26, 2009.

Whether the employer would be liable for any benefits paid to Ms. Riedl for the period of September 27, 2009 through January 2, 2010.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Laura Riedl started working through Sedona Staffing on September 14, 2009 and worked in one temporary employment work assignment. Ms. Riedl last performed work for Sedona Staffing on December 24, 2009, when she completed the assignment and was laid off from the assignment. Both Ms. Riedl and Sedona Staffing expected that the assignment would be full-time. As it turned out, the assignment involved full-time hours during just two weeks. The rest of the time, Ms. Riedl was scheduled for full-time hours, but sent home early due to a lack of work. Ms. Reidl worked the hours the client business, Betty Jane's, made available to her.

Sedona Staffing's work week begins on Monday and ends on Sunday. Ms. Riedl's hours worked in the assignment were as follows:

<u>Work week ending date</u>	<u>Number of hours worked</u>
September 20, 2009,	26.50 hours
September 27	36.75 hours
October 4	36.25 hours
October 11	30.25 hours
October 18	27.58 hours
October 25	34.50 hours
November 1	35.83 hours
November 8	36.00 hours
November 15	36.67 hours
November 22	36.83 hours
November 29	34.00 hours
December 6	38.75 hours
December 13	40.00 hours
December 20	40.00 hours
December 27	12.00 hours

On January 5, 2010, Ms. Riedl started new full-time work with a different employer. Ms. Riedl had accepted the offer of new employment immediately after Thanksgiving, with an agreement that she would start the new employment on January 5, 2010.

During the benefit weeks that ended December 12 and 19, 2009, Ms. Riedl worked full-time hours and reported wages that exceeded her weekly benefit amount by more than \$15.00.

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".

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. Iowa Code section 96.19(38)(b).

Both parties testified to an expectation that the assignment at Betty Jane's would be full-time. The weight of the evidence indicates that Ms. Riedl was regularly scheduled for full-time hours, but was frequently sent home early due to a lack of work. There is sufficient evidence to conclude Ms. Riedl was partially unemployed during all but two weeks of the assignment.

Ms. Riedl was eligible for benefits based on partial unemployment during the benefit weeks that ended October 3, 2009 through December 5, 2009 and for the benefit week that ended December 26, 2009, provided she is otherwise eligible. Ms. Riedl was not eligible benefits for the weeks that ended December 12 and 19, 2009, because she was working full-time.

The weight of the evidence also indicates that Ms. Riedl was available for work during the week that ended January 2, 2010. During that week, Ms. Riedl was waiting to start the new employment she had secured with the January 5, 2010 start date. Ms. Riedl was eligible for benefits for the week that ended January 2, 2010, provided she was otherwise eligible.

Effective the week that ended January 9, 2010, Ms. Riedl was no longer eligible for benefits, because she had become employed full-time and no longer met the definition of "available" for work under Iowa Code section 96.4(3).

The employer is not liable for, and will not be charged for, the *extended* benefits paid to Ms. Riedl for the period of September 27, 2009 through January 2, 2010 because the employer is not a *base period employer* for purposes of the *original claim* that was effective October 26, 2008, or the *extended* benefits based on the same original claim date. See Iowa Code section 96.7(2)(a)(2). This would not prevent the employer from being a *base period employer* for purposes of a new *original claim* filed in a new claim year. See Iowa Code section 96.7(2)(a)(2).

The administrative law judge was unable to address the separate legal issues of benefit eligibility and employer liability associated with *the separation* from the employment because those issue were not included in the issues set for hearing and one or both parties was not willing to waive formal notice on those issues. Accordingly, the separation issues will need to be addressed by means of a remand to the Claims Division at Workforce Development.

DECISION:

The Agency representative's November 25 2009, reference 01, decision is modified as follows. The claimant was partially unemployed during the benefit weeks that ended October 3, 2009 through December 5, 2009, and was eligible for benefits for those weeks, provided she was otherwise eligible. The claimant was partially unemployed during the benefit week that ended December 26, 2009, and was eligible for benefits, provided she is otherwise eligible. The claimant was not eligible benefits for the weeks that ended December 12 and 19, 2009, because she was working full-time. The claimant was able and available for work during the benefit week that ended January 2, 2010 and was eligible for benefits, provided she was otherwise eligible. Effective the benefit week that ended January 9, 2010, the claimant was employed full-time, no longer met the definition of "available" for work for unemployment insurance purposes, and was no longer eligible for benefits.

The employer is not liable for, and will not be charged for, the *extended* benefits paid to the claimant for the period of September 27, 2009 through January 2, 2010, because the employer is not a *base period employer* for purposes of the *original claim* that was effective October 26, 2008, or the *extended* benefits based on the same original claim date. See Iowa Code section 96.7(2)(a)(2). This would not prevent the employer from being a *base period employer* for purposes of a new *original claim* filed in a new claim year. See Iowa Code section 96.7(2)(a)(2).

This matter is remanded to the Claims Division for determination of claimant eligibility and employer liability based on the December 24, 2009 *separation* from the employment.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw