

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STANTON, TARRAH, L
Claimant

APPEAL NO. 12A-UI-08973-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 06/10/12
Claimant: Appellant (4)

Section 96.4(3) – Able & Available
Section 96.4(3) – Same Hours and Wages

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 18, 2012, reference 01, decision that denied benefits effective June 10, 2012 based on an agency conclusion that she was not partially unemployed from her employment at Casey's Marketing Company. After due notice was issued, a hearing was held on August 20, 2012. Claimant participated. Kaylan Thunderman represented the employer. The hearing in this matter was consolidated with the hearing in appeal number 12A-UI-08974-JTT. Exhibits One, Two and Three were received into evidence. The administrative law judge took official notice of the agency's administrative record of benefits disbursed to the claimant, wages reported by the claimant, and the claimant's use of the automated telephonic weekly claims reporting system.

ISSUES:

Whether the claimant was partially unemployed from the employment at Casey's marketing company at any point since she established the claim for unemployment insurance benefits that was effective June 10, 2012.

Whether the claimant was able to work and available for work during the two-week period of June 10, 2012 through June 23, 2012, when she had an active claim for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed by Casey's marketing company as a part-time cashier from May 2011 and last performed work for the employer on June 28, 2012. At the start of the employment, claimant had worked approximately 30 hours per week, four or five shifts per week. At the start of the employment, the claimant will usually work from 4:00 p.m. to approximately 11:15 p.m. In December 2011, the employer reduced the claimant's work hours to three or four shifts per week and reduced the work hours to 8:00 p.m. to 11:00 p.m. in March 2012, the employer further reduced the claimant's work hours to two or three shifts per week, but The work hours 8:00 p.m. to 11:00 p.m. In May 2012, the employer further reduced the claimant's work hours

to 1 to 2 shifts per week, but The work hours 8:00 p.m. to 11:00 p.m. Throughout the employment, the claimant had not made any change to her work availability outside of a maternity leave that occurred in the middle of 2011.

The claimant established a claim for unemployment insurance benefits that was effective June 10, 2012, based on the reduction in work hours. The claimant's weekly benefit amount was set at \$93.00. Claimant had an active claim for unemployment insurance benefits only for the two-week period of June 10, 2012 through June 23, 2012. For each of those two weeks, the claimant reported \$40.00 in wages. Claimant did not refuse any work during those two weeks. The claimant discontinued her claim for benefits after the week that ended June 23, 2012.

After the claimant worked on June 28, 2012, she did not return for subsequent shifts because she was arrested and incarcerated on a child endangerment charge as of the morning of June 29, 2012. The claimant remained incarcerated until July 23, 2012. At the start of the incarceration, the claimant's fiancé had notified Casey's clerk of the incarceration. The claimant did not notify her supervisor directly of her need to be absent from work. The claimant had been unable to contact the employer directly, due to the incarceration. On July 5, 2012, after the claimant had failed to appear for shifts on June 29, July 2 and July 3, the employer concluded the employment was done.

This employer is the claimant's only base period employer.

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".

871 IAC 24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that

sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

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).

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. 871 IAC 24.23(26). Contract for hire merely means the established conditions of the employment. See Wiese v. Iowa Dept. of Job Service, 389 N.W.2d 676, 679 (Iowa 1986).

Iowa Code section 96.7(1) and (2) provides, in relevant part, as follows:

Employer contributions and reimbursements.

1. Payment. Contributions accrue and are payable, in accordance with rules adopted by the department, on all taxable wages paid by an employer for insured work.

2. Contribution rates based on benefit experience.

a. (1) The department shall maintain a separate account for each employer and shall credit each employer's account with all contributions which the employer has paid or which have been paid on the employer's behalf.

(2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

[Emphasis added.]

The weight of the evidence indicates that the claimant was able to work and available for work during the two-week period of June 10, 2012 through June 23, 2012, the period during which she had an active claim for unemployment insurance benefits. Claimant was at that time job-attached and available for the work that the employer had for her. The evidence further indicates that the employer had cut the claimant's work hours through a series of steps over the course of her employment so that the claimant went from working approximately 30 hours per week to working three to six hours per week. The final employer-initiated reduction in work hours occurred in late May 2012. The weight of the evidence indicates the claimant was indeed partially unemployed during the two-week period of June 10, 2012 through June 23, 2012. The claimant is eligible for benefits for those two weeks, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant for those two weeks.

DECISION:

The Agency representative's July 18, 2012, reference 01, decision is modified as follows. The claimant was able to work and available for work during the two-week period of June 10, 2012 through June 23, 2012, the period during which she had an active claim for unemployment insurance benefits. The claimant was partially unemployed during the two-week period of June 10, 2012 through June 23, 2012. The claimant is eligible for benefits for those two weeks, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant for those two weeks.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs