

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SPECIOZA N TALIDDA**

Claimant

**APPEAL NO: 09A-UI-19406-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MOSAIC**

Employer

**OC: 11/15/09**

**Claimant: Appellant (4)**

Section 96.19-38-b – Eligibility for Partial Unemployment Insurance Benefits  
871 IAC 23.43(4)(a) – Charges for Partial Unemployment Insurance Benefits  
Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Specioza N. Talidda (claimant) appealed a representative's December 17, 2009 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits in conjunction with her employment with Mosaic (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 8, 2010. The claimant participated in the hearing. Lynn Corbeil of TALX Employer Services, formerly known as Johnson & Associates, appeared on the employer's behalf and presented testimony from two other witnesses, Angie Ksiazek and Nancy Seel. During the hearing, Employer's Exhibit One was entered into evidence. 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.

**ISSUE:**

Is the claimant employed by the employer for less than her usual hours and wages even though she remains able and available for work, and is she therefore eligible for full or partial unemployment insurance benefits?

**FINDINGS OF FACT:**

The claimant started working for the employer on August 24, 2004. Beginning in about November 2006 she worked part time (averaging 24 hours per week) as a direct support associate in the employer's group home program providing services for adults with intellectual disabilities. She primarily works evening or overnight shifts, primarily on weekends, but she also works one afternoon shift every other week. The claimant also had full-time employment beginning in November 2006 with another employer, for which she worked 8:00 a.m. to 5:00 p.m., Monday through Friday, except when she adjusted her schedule to start and end earlier to accommodate working an afternoon for the employer. The claimant's hourly wage since August 2009 is \$11.54.

The claimant's last day of work for her other full-time employer was November 20, 2009. The indication in the hearing in this case was that she was laid off for lack of work as of that date by that employer. As a result of that separation, the claimant established an unemployment insurance benefit year effective November 15, 2009. Her weekly benefit amount was calculated to be \$374.00, and her resulting earnings limit for partial unemployment insurance benefits is \$389.00.

At about the same time as the claimant lost her employment with her full-time employer, she began experiencing a medical condition which resulted in her missing work on her scheduled hours with this employer (Mosaic). She obtained coverage for shifts on November 19 and November 20, and was absent from work on November 21 because she was in the emergency room. On November 23 she called in an absence to her shift that day. Her doctor ultimately indicated that she was suffering from a pinched nerve, and prescribed medication.

On November 24 the claimant advised the employer that because of her condition, she needed to be off work at least through November 29. As a result, she missed scheduled hours on November 27 and November 28. December 3 was the next day she was regularly scheduled to work, and she did provide a doctor's release indicating that she was excused from work the period of October 29 through December 3. She was then allowed to return to work with the employer on December 3.

Since December 3 the employer has continued to provide the claimant with the same hours and wages as had previously been the pattern of employment.

#### **REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant is eligible for partial unemployment insurance benefits and whether the employer's account is subject to charge. The unemployment insurance law provides that a claimant is deemed partially unemployment insurance benefits if she has been permanently or temporarily separated from one employer and earns less than her weekly benefit amount plus \$15.00 in other employment. Iowa Code § 96.19-38-b; see also Iowa Code § 96.3-3.

If the claimant had other part-time employment during her base period and remains in that employment, she continues to be eligible for benefits as long as she is receiving the same employment from the part-time employer that she received during the base period. However, under those circumstances the part-time employer's account is relieved of benefit charges. 871 IAC 23.43(4)a.

Here the claimant was separated from her regular full-time employer and continued to work for her part-time base period employer. The employer was providing the claimant with substantially the same employment as it provided during her base period. Consequently, the claimant is qualified to receive at least partial unemployment insurance benefits effective November 15, 2009, provided she was otherwise eligible. To be eligible for benefits for any particular week, the claimant must file a weekly claim for that week reporting her wages from all employers earned (not paid) for that week; the amount of her eligibility will then be determined pursuant to the formula set out by the statute. 871 IAC 24.52(8); Iowa Code § 96.3-3.

Under rule 871 IAC 23.43(4)a the employer is exempt from charge for benefits paid to the claimant as long as it continues to provide the claimant with the same part-time employment it provided during her base-period.

However, implicit with the concept of allowing partial benefits for a claimant who has become partially unemployed is the expectation that she remain available for work on the same basis as when she was previously working and earning the wage credits on which her unemployment insurance benefits are based. Iowa Code § 96.4-3; 871 IAC 24.22(2)(a). For the benefit period beginning November 15, 2009 and ending December 5, 2009 the claimant was not able and available for her regular hours because of being off work for medical reasons. 871 IAC 24.22(1)a; 871 IAC 24.23(1), (34), (35). As a result, benefits are denied for that two-week period as she was not available on the same basis as when she was working during the high quarter of her base period. Beginning December 6, 2009, benefits are allowed, if the claimant is otherwise eligible, subject to the claimant properly reporting the wages she earns in her part-time employment as discussed above.

**DECISION:**

The unemployment insurance decision dated December 17, 2009 (reference 01) is modified in favor of the claimant. The claimant was not able and available for her regular hours and not eligible to receive unemployment insurance benefits for the two-week period between November 15, 2009 and December 5, 2009. Beginning December 6, 2009 the claimant is eligible for partial unemployment insurance benefits, provided she is otherwise eligible, and the employer's account is exempt from charge for benefits paid to the claimant.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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