

The claimant was off work due to an injury in early June 2005. She was released to return to work without restrictions on June 16, 2005. The employer would not allow the claimant to return to her old job and hours because the claimant has asserted that working long hours without breaks contributed to her injury, but she would not guarantee the employer that she would always take her scheduled breaks. The claimant's normal schedule involved working without a direct supervisor and the employer wanted to make sure the claimant took her scheduled breaks. The claimant was also asked about working in another area, but she said she preferred working in the floral department.

As a result of the claimant's reluctance to give the employer a guarantee that she would take her scheduled breaks, the claimant's hours were reduced to nine hours per week. As a result of the reduction in hours, the claimant filed a new claim for unemployment insurance benefits with an effective date of August 21, 2005. Her weekly benefit amount was determined to be \$143.00. During her base period from April 1, 2004, to March 31, 2005, the claimant was working an average of 27 hours per week.

The claimant has had weeks since filing the claim for unemployment insurance benefits in which she worked less than her regular hours and had earnings less than her earnings allowance of \$158.00 (\$143.00 plus \$15.00).

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was eligible for partial unemployment insurance benefits effective August 21, 2005. The claimant filed a claim requesting partial unemployment insurance benefits for the weeks in which her earnings were less than her regular earnings.

Iowa Code section 96.3-3 provides:

3. Partial unemployment. An individual who is partially unemployed in any week as defined in section 96.19, subsection 38, paragraph "b", and who meets the conditions of eligibility for benefits shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. The benefits shall be rounded to the lower multiple of one dollar.

Iowa Code section 96.19-38-b provides in 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.

The preponderance of the evidence establishes the claimant's regular workweek at the point she filed her new claim was 27 hours per week. She was working less than that regular workweek due to a reduction in hours and she was entitled to partial unemployment insurance benefits since her earnings were less than her weekly benefit amount plus \$15.00.

The unemployment insurance law provides that an individual be able to and available for work. Iowa Code section 96.4-3. The claimant was able to and available to work and did not restrict

the number of hours she was willing to work. The claimant expressed a preference for where she wished to work but never actually refused to work outside the floral department.

The final issue is whether the employer's account is subject to charge for benefits paid to the claimant.

Iowa Code section 96.7-2-a(2) provides in part:

(2) The amount of regular 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.

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.

The employer's account is subject to charge for benefits because the employer did not provide the claimant with the same employment as provided during the base period.

#### DECISION:

The unemployment insurance decision dated September 20, 2005, reference 02, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible. The employer's account is subject to charge for benefits paid to the claimant.

saw/pjs