

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

CARLA J LANSER
Claimant

APPEAL NO. 19A-UI-01960-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**DUBUQUE COMMUNITY SCHOOL
DISTRICT**
Employer

OC: 02/17/19
Claimant: Respondent (2)

Iowa Code § 96.4(3) – Able and Available
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment

STATEMENT OF THE CASE:

Dubuque Community School District (employer) appealed a representative's February 27, 2019, decision (reference 01) that concluded Carla Lanser (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 20, 2019. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Mindy Klein, Payroll Assistant. The employer offered and Exhibit 1 was received into evidence. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was eligible for unemployment insurance benefits for the one-week period ending February 23, 2019.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on August 27, 2007, as a full-time para professional. The claimant filed her claim for unemployment insurance benefits with an effective date of February 17, 2019. Her weekly benefit amount is \$355.00.

For the week ending February 23, 2019, the claimant reported she earned \$352.00. She received \$91.00 in unemployment insurance benefits. The employer's records showed she was not scheduled for one day of work because of a shut down due to inclement weather. The employer also had two optional two-hour late start days. The claimant chose to work one but not the other. If the claimant had worked both late starts, she would have earned wages in the amount of \$370.85 for the week ending February 23, 2019.

For the week ending March 3, 2019, the claimant reported she earned \$435.00 and received no unemployment insurance benefits. The claimant did not file for benefits after March 3, 2019.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not eligible for unemployment insurance benefits for the one-week period ending February 23, 2019.

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".

Iowa Code section 96.19(38) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) 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.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). The claimant was hired as a full-time worker. The claimant's weekly benefit amount (\$355.00) plus \$15.00 is \$370.00. For the week ending February 23, 2019, the claimant could have earned \$371.00 if she had not reduced her hours. The claimant was not partially employed for the one-week period ending February 23, 2019. Benefits are denied.

DECISION:

The representative's February 27, 2019, decision (reference 01) is reversed. The claimant was not partially employed for the one-week period ending February 23, 2019. Benefits are denied.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs