

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BECKY S LYNCH

Claimant

APPEAL NO. 07A-UI-08093-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

INDIAN LANES INC

INDIAN LANES BOWLING CENTER

Employer

**OC: 07/08/07 R: 01
Claimant: Respondent (1-R)**

Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Indian Lanes Inc., doing business as Indian Lanes Bowling Center, filed a timely appeal from the August 14, 2007, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on September 14, 2007. Claimant Becky Lynch participated and was represented by attorney Charles Schulte. Valarie Anderson, owner, represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and the claimant's wages earned from the employment. Exhibit One was received into evidence.

ISSUE:

Whether the claimant was able to work and available for work during the period of July 8, 2007 until August 10, 2007.

Whether, during the period of July 8, 2007 through August 10, 2007, the claimant continued to be employed by the employer under the same hours and wages as contemplated under the original contract of hire or conditions of employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Becky Lynch was employed by Indian Lanes Bowling Center from November 2005 until August 10, 2007. Ms. Lynch worked primarily as a cook, bartender, and waitress, but also performed cleaning duties and assisted at the front desk during league season. League season runs from the end of August until the end of April. During league season, Ms. Lynch worked 30 to 40 hours per week. At the end of league season, the employer's business slows. During the summer of 2006, the employer had a dinner clientele that generated work hours for Ms. Lynch. However, a new restaurant opened in Sac City and the employer lost some or most of its dinner clientele. At the end of the most recent bowling season in April 2007, the work hours available to Ms. Lynch dropped by 10 to 15 hours per week. There was a further reduction in hours in July that prompted Ms. Lynch to file for unemployment insurance benefits. Ms. Lynch established a claim for unemployment insurance benefits that was effective July 8, 2007.

Between the effective date of the claim and the August 10, 2007 separation, Ms. Lynch continued to work a significantly reduced schedule, but made herself available for the hours offered to her.

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 workweek 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 or conditions of employment, such claimant cannot be considered partially unemployed. 871 IAC 24.23(26).

The weight of the evidence indicates that Ms. Lynch was partially unemployed from the time she established her claim for unemployment insurance benefits. Accordingly, for the period of July 8, 2007 through August 10, 2007, Ms. Lynch met, or was exempt from, the eligibility requirements set forth in Iowa Code section 96.4(3). Accordingly, for the period of July 8, 2007 through August 11, 2007, Ms. Lynch was eligible for benefits, provided she was otherwise eligible, and the employer's account could be charged for benefits paid to Ms. Lynch.

Both parties indicated a voluntary quit that occurred on August 10, 2007. The claimant was not willing to waive formal notice on the issues relating to the separation. This matter will be remanded to a claims representative for determination of the claimant's eligibility and the employer's liability for unemployment insurance benefits since the separation date. Because of the separation from the employment and the claimant's new employment, the claims representative will need to consider claimant's availability from the point of the separation. For that reason, the administrative law judge's decision herein is limited to the period of July 8, 2007 through the benefit week that ended August 11, 2007.

DECISION:

The Agency representative's August 14, 2007, reference 01, is affirmed. For the period of July 8, 2007 through August 10, 2007, the claimant met, or was exempt from, the eligibility requirements set forth in Iowa Code section 96.4(3). Accordingly, for the period of July 8, 2007

through August 11, 2007, the claimant was eligible for benefits, provided she was otherwise eligible, and the employer's account could be charged for benefits paid to the claimant.

This matter remanded to a claims representative for determination of the claimant's eligibility and the employer's liability for unemployment insurance benefits since the August 10, 2007 separation. In addition to the separation issues, the claims representative will need to consider claimant's availability from the date of the separation. For that reason, the administrative law judge's decision herein is limited to the period of July 8, 2007 through the benefit week that ended August 11, 2007.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw