

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PALINA E PRASASOUK
Claimant

APPEAL NO. 11A-UI-04513-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

I-80 SPAGHETTI WORKS CORP
Employer

**OC: 02/13/11
Claimant: Respondent (2-R)**

Section 96.4-3 – Eligibility for Benefits
Section 96.19-38-b – Partial Unemployment

STATEMENT OF THE CASE:

I-80 Spaghetti Works Corporation filed a timely appeal from an unemployment insurance decision dated March 28, 2011, reference 01, that allowed benefits to Palina A. Prasasouk. After due notice was issued, a telephone hearing was held May 3, 2011, with General Manager John Schoal participating for the employer. Ms. Prasasouk did not provide a telephone number at which she could be contacted. Employer Exhibits One through Three were admitted into evidence. The administrative law judge takes official notice of Agency benefit payment records.

ISSUE:

Is the claimant eligible for unemployment insurance benefits?

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Palina E. Prasasouk has been employed part-time as a server and hostess by I-80 Spaghetti Works Corporation since February 25, 2010. No employees are guaranteed full-time hours. Business is slower from December through February. All employees are scheduled for fewer hours during these months. Business in early 2011 was similar to business in early 2010.

Ms. Prasasouk has received unemployment insurance benefits since filing a claim effective February 13, 2011.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the claimant is eligible to receive unemployment insurance benefits. She is not.

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".

The first element of eligibility is being unemployed, either totally or partially. The claimant reported wages for each of the five weeks she requested benefits. An individual is partially unemployed if the individual is working less than the individual's regular number of hours and is earning less than the individual's weekly benefit amount plus \$15.00. See Iowa Code section 96.19-38-b. While Ms. Prasasouk's earnings and hours during the five weeks in question may have been lower than she was earning during the restaurant's busy season, the evidence persuades the administrative law judge that the claimant was aware of the seasonal fluctuation of hours and that the hours she received were consistent with what other employees had received during the comparable months of 2010, prior to the claimant's hiring. Under these circumstances, the administrative law judge concludes that the claimant does not meet the definition of being unemployed. Therefore, she is not eligible for unemployment insurance benefits.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a

continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The question of whether the claimant must repay the benefits she has received is remanded to the Unemployment Insurance Services Division.

DECISION:

The unemployment insurance decision dated March 28, 2011, reference 01, is reversed. The claimant is not eligible for unemployment insurance benefits. The question of repayment of benefits is remanded.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw