

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TAMMY K GEWEKE
Claimant

APPEAL NO. 09A-UI-01572-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RED FOX INN
Employer

**OC: 11/30/08 R: 03
Claimant: Appellant (1)**

Section 96.4-3 – Eligibility for Benefits

STATEMENT OF THE CASE:

Tammy K. Geweke filed a timely appeal from an unemployment insurance decision dated January 29, 2009, reference 01, that denied unemployment insurance benefits to her upon a finding that she was still employed as in her original contract of hire. After due notice was issued, a telephone hearing was held February 20, 2009 with Ms. Geweke participating. Business Manager Tammy Hall participated for the employer, Red Fox Inn. This matter is considered on a consolidated record with 09A-UI-01573-AT.

ISSUE:

Is the claimant partially unemployed?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Tammy K. Geweke is employed as a part-time housekeeper by Red Fox Inn, a position she began on January 28, 2008. She is a part-time employee with no minimum guarantee of hours. Her hours vary day by day depending upon the occupancy level at Red Fox Inn.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the claimant is eligible for 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 claimant has the burden of proof on elements of basic eligibility. See Iowa Code section 96.6-2. The first element of eligibility is that the individual must be unemployed. Unemployment may be either total or partial. See Iowa Code section 96.19-38. One who is working fewer than the individual's regular hours and earning less than the individual's weekly benefit amount plus \$15.00 may be considered partially unemployed. The evidence in this record establishes that Ms. Geweke has never been promised any specific number of hours and that her hours have varied throughout her employment depending upon the employer's occupancy rate. Concluding that the claimant is not partially unemployed, the administrative law judge rules that benefits must be withheld.

DECISION:

The unemployment insurance decision dated January 29, 2009, reference 01, is affirmed. The claimant is ineligible to receive unemployment insurance benefits.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs