

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALICE M SMITH

Claimant

APPEAL NO: 14A-UI-00963-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITY OF DES MOINES PAYROLL DEPT-B

Employer

OC: 12/22/13

Claimant: Respondent (1)

Section 96.19-38-b – Partially Unemployed
Section 96.19-38-c – Temporarily Unemployed

STATEMENT OF THE CASE:

City of Des Moines Payroll Department B (employer) appealed a representative's January 21, 2014 decision (reference 01) that concluded Alice M. Smith (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 18, 2014. The claimant participated in the hearing. Carol Moser, assistant city attorney, appeared on the employer's behalf and presented testimony from two witnesses, Tim Smith and Vivone Abdel-Razeq. During the hearing, Employer's Exhibits Two, Three, and Four were entered into evidence. Administrative notice is taken of an Employment Appeal Board decision issued on April 18, 2013 involving the same parties in a claim year effective December 23, 2012 under appeal 13B-UI-01138, which affirmed an administrative law judge's decision denying benefits to the claimant. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant partially or temporarily unemployed and eligible for full or partial unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on April 5, 2011. Her original position was as a "park ambassador," but when that position title was phased out, she became a "park and recreation associate." On May 15, 2012, the claimant signed a "Terms of Employment" agreement which stated, "I, Alice M. Smith, understand that the Park & Recreation Associate position that I have accepted is Regular Less than Half-Time with the City of Des Moines Park and Recreation Department. I further understand that I may work up to 40 hours weekly during the months of May through August and prior to and after this period my work hours will be reduced working up to 19 hours weekly provided availability of work." (Employer's Exhibit Three.)

The claimant even occasionally worked more than 40 hours per week during the period of May through August 2013, when her primary job duty was to supervise a wading pool. In April 2013 and in September 2013 she worked about 19 hours per week; during those months her primary job duty was to take admissions for soccer matches. She also did some work on weekends opening, closing, and cleaning park shelters. Her last day of work prior to establishing a new claim year effective December 22, 2013 was October 9, 2013. The employer anticipates recalling the claimant for work in the spring of 2014.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides that a claimant is deemed partially unemployment insurance benefits if she is not employed at her usual hours and wages and earns less than her weekly benefit amount plus \$15.00. Iowa Code § 96.19-38-b. This assumes that the claimant still has some hours and wages during the period in question. In this case, after October 9, 2013 the claimant was not even “partially” employed, she had no hours or wages. In essence, she was seasonally laid off, just as a seasonal construction worker would be “laid off” in the winter until being recalled for work in the spring. She became at least “temporarily unemployed” within the meaning of Iowa Code § 96.19-38-c:

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 fact that the claimant can be reasonably assured that she will be recalled for work again in the spring does not change the nature of her current unemployment. The employer relies on the “Terms of Employment” agreement signed by the claimant on May 15, 2013 to assert that during the period the claimant is not working from about October through March she is “still employed under her same hours and wages” and therefore has no entitlement to unemployment insurance benefits. This interpretation of the agreement is equivalent to an employer requiring an employee to waive her rights to seek unemployment insurance benefits during a period of unemployment, which is expressly barred by statute and is void. Iowa Code § 96.15-1. The fact that this perception of the law as applied to such an agreement was not recognized or applied in a prior claim year is not binding upon this administrative law judge viewing the present situation in the current claim year.

As of October 10, 2013, the claimant became at least temporarily unemployed, and is qualified to receive unemployment insurance benefits upon the filing of her claim effective December 22, 2013, provided she was otherwise eligible.

DECISION:

The unemployment insurance decision dated January 21, 2014 (reference 01) is affirmed. The claimant is eligible to receive unemployment insurance benefits as of December 22, 2013.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs