

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRANDIE M KEEGAN
Claimant

APPEAL NO: 11A-UI-01359-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GORDMANS INC
Employer

OC: 12/19/10
Claimant: Appellant (4)

Section 96.4(3) – Ability and Availability for Work

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's February 3, 2011 determination (reference 02) that held her ineligible to receive partial benefits because she still worked for the employer at the same hours and wages she had been hired to work. The claimant participated in the hearing. Tom Kuiper represented the employer. Tim Dever, the store manager appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant is eligible to receive partial benefits because the employer is not one of her base period employers.

ISSUE:

Is the claimant partially unemployed and eligible to receive benefits or is she ineligible to receive benefits because she continues to work the same hours and wages the employer hired her to work?

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of December 19, 2010. The employer hired the claimant as a part-time seasonal employee in early August 2010. After the holiday season ended the employer continues her part-time employment and gave her a raise.

After the holiday season ended and the claimant continued working, her hours were reduced because of business reasons. Employees' hours are always reduced after the holiday season. Even though the claimant worked full-time hours during the employer's busy season, she is working the typical number of hours a week the employer has available for employees after the holiday season.

When the claimant established a new benefit year during the week of December 19, 2010, the employer is not one of her base period employers.

REASONING AND CONCLUSIONS OF LAW:

A regulation states that where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract of hire and is not working on a reduced workweek, the claimant cannot be considered partially unemployed. 871 IAC 24.23(26). This regulation applies when the employer is a base period employer. If a claimant has been working part time for a base period employer and files a claim for benefits when she still works the same hours and wages she had been working, she is cannot be considered partially unemployed even if she monetarily eligible to receive benefits.

In this case, the employer is not a base period employer. To hold the claimant ineligible to receive benefits for continuing to work part time, defeats the purpose of paying partial benefits to claimant when they accept part time or even seasonal employment. If the claimant only works for the employer until she files another benefit year, she may at that time not be eligible to receive benefits because her wage credits are based on her employment with the employer and if nothing changes then 871 IAC 24.23(26) applies.

As of December 19, 2010, the claimant is eligible to receive partial benefits even though she works for the employer. She established she is able to and available for work. Iowa Code § 96.4(3). During the claimant's current benefit year, the employer's account will not be charged.

DECISION:

The representative's February 3, 2011 determination (reference 02) is modified in the claimant's favor. The employer is not one of the claimant's base period employers. During her current benefit year, the employer's account will not be charged. The claimant is eligible to receive benefits as of December 19, 2010, since her monetary eligibility to receive benefits is not based on this employment.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css