

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KIMBERLEE D OATES**  
Claimant

**CBS STAFFING LLC**  
Employer

**APPEAL NO: 13A-UI-08706-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/30/13**  
**Claimant: Appellant (2)**

Section 96.4-3 – Able and Available  
Section 96.19-38 – Partial Unemployment

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated July 24, 2013, reference 01, that held she was still employed part-time working whenever work was available as of June 30, 2013, and benefits are denied. A telephone hearing was held on September 3, 2013. The claimant participated. The employer did not participate.

**ISSUES:**

The issue is whether the claimant is able and available for work.

The issue is whether the claimant is partially unemployed.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record, finds: The claimant began working for her employer in August 2012 as part-time on-call C.N.A., and she has maintained the same employment status through the filing of her unemployment claim effective June 30, 2013.

Claimant let the employer know she had accepted employment at the Iowa Jewish Home in the first quarter 2013, and she did turn down some work shift opportunities for this reason.

Claimant was terminated by the Iowa Jewish Home (employer number 343364) on July 1, 2013. The department issued a decision July 26 that allowed benefits. Claimant let the employer know she could work the same shifts as she has in the past. The record shows claimant earned gross wages of \$8,708.00 for the fourth quarter 2012, and \$6,060.00 for the first quarter of 2013. She has worked only four days for the employer in the past five weeks.

The employer failed to respond to the hearing notice.

## REASONING AND CONCLUSIONS OF LAW:

Ref. Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Code section 96.19-38 provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. 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 full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

An individual shall be deemed partially unemployed in any week in which the individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

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 administrative law judge concludes that claimant does meet the availability requirements of the law for partial unemployment benefits effective June 30, 2013.

Claimant is not receiving the same employment on and after the effective date of her claim as she has worked for the employer during the base period. While claimant limited her employment availability while working for another employer, she notified the employer about that termination and made herself available as she had worked in the past. The employer has not offered claimant employment after she filed her claim as she had worked.

**DECISION:**

The department decision dated July 24, 2013, reference 01, is reversed. The claimant is eligible for benefits effective June 30, 2013, as she meets the availability requirements of the law.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/css