

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RUTH A ROWE**  
Claimant

**APPEAL NO. 08A-UI-09854-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DOLGENCORP INC  
DOLLAR GENERAL**  
Employer

**OC: 07/27/08 R: 03**  
**Claimant: Respondent (1)**

Iowa Code § 96.4(3) – Able and Available  
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment  
Iowa Code § 96.7(2)a – Same Base Period Employment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the October 14, 2008, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on November 10, 2008. Claimant responded to the hearing notice instructions but was not available when the hearing was called and did not participate. Employer participated through Dede Gradek.

**ISSUE:**

The issue is whether claimant meets the definition of being considered unemployed and if she is able to and available for work effective July 27, 2008.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was hired to work as a part-time cashier at \$7.25 per hour until August 21, 2008 when she was discharged. That separation is the subject of a pending fact-finding interview and is not addressed in this decision. While employer argues that part-time means working fewer than 35 hours per week with no minimum number of hours guaranteed, claimant worked an average of 36.33 hours per week (assuming a rate of pay of \$7.25) during her base period from April 2007 through March 2008. During the weeks in which she was paid partial benefits, she worked 17.93 hours (\$130.00 gross wages) during five weeks; 18.07 hours (\$131.00 gross wages) during another five weeks; and an average of 22.71 hours for each of the remaining three weeks.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant is partially unemployed effective July 27, 2008.

Iowa Code § 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".

Iowa Code § 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.

Iowa Code § 96.7-2-a(2) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and

reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

Because the claimant is currently employed less than her established base period wage history of an average of 36.33 hours per week, which employer indicates is equivalent to full-time work, she is considered partially unemployed. Benefits are allowed based upon reporting of weekly earnings. For whatever period the employer is not offering the same wages and hours as contemplated in the contract of hire and established by the base period wage history, it may be liable for benefit charges to its account.

**DECISION:**

The October 14, 2008 reference 01, decision is affirmed. The claimant is partially unemployed and benefits are allowed, provided she is otherwise eligible. The account of employer (account number 174688), may be liable for charges.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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