

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

MELINDA R STRATTON
800 BANCROFT #2
DES MOINES IA 50315

JOHN Q HAMMONS HOTELS LP
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-11358-DWT
OC: 05/30/04 R: 02
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4-3 – Ability to and Availability for Work

STATEMENT OF THE CASE:

Melinda R. Stratton (claimant) appealed a representative's October 11, 2004 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits as of September 12, 2004, because she was still working the same hours and wages for John Q. Hammons Hotels LP (employer) as she did during her base period. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 15, 2004. The claimant participated in the hearing. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which the employer's representative/witness could be contacted to participate in the hearing. As a result, no one represented the employer. Based on the evidence, the arguments of the claimant, 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 unemployed?

FINDINGS OF FACT:

The claimant started working for the employer in November 1997. She works as a part-time parking attendant. The claimant still works for the employer anywhere from 15 to 45 hours a week. The claimant earns \$8.60 an hour.

After the claimant established a claim for benefits during the week of May 30, 2004, her maximum weekly benefit was determined to be \$140.00. The claimant's average weekly wage during the high quarter in her base period is \$248.092. During her base period, the claimant worked more hours during the third quarter, or from July 1 through September 30, than other months. The other months the claimant earned an average of \$196.00 to \$218.00 per week. With the exception of a week in August and the week ending October 23, 2004, the claimant has earned more than her weekly benefit amount. The claimant reopened her claim the week of September 12 and October 17, 2004.

REASONING AND CONCLUSIONS OF LAW:

When a claimant is still employed in a part-time job at the same hours and wages and is not working a reduced workweek, the claimant is not partially unemployed for unemployment insurance purposes. 871 IAC 24.23(26). The evidence establishes the claimant continues to work as she has in the past. In comparing the claimant's wages in quarters of 2003 to the same quarters in 2004, the claimant is working at the same or a similar number of hours. Also, with the exception of two weeks, the claimant reports weekly earning that exceed her maximum weekly benefit amount of \$140.00. As of September 12, 2004, the claimant is not partially unemployed and is not eligible to receive benefits.

DECISION:

The representative's October 11, 2004 decision (reference 01) is affirmed. The claimant is not partially unemployed. Therefore, as of September 12, 2004, she is not eligible to receive partial unemployment insurance benefits.

dlw/b