

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHELLEY S KNEPPER
Claimant

APPEAL NO. 100-UI-16672-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WESTERN DUBUQUE COMM SCH DIST
Employer

OC: 05/02/10

Claimant: Respondent (2/R)

Section 96.19-38-b – Eligibility for Partial Unemployment Insurance Benefits
Section 96.4-3 – Able and Available
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Western Dubuque Community School District (employer) appealed a representative's August 2, 2010 decision (reference 01) that concluded Shelley S. Knepper (claimant) was qualified to receive unemployment insurance benefits and that the employer's account was subject to charge. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 1, 2011. The claimant failed to respond to the hearing notice and provide a telephone number at which she could be reached for the hearing and did not participate in the hearing. Dave Wegmann appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant employed by the employer for less than her usual hours and wages and eligible for full or partial unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on or about November 1, 2002. She works a few hours per week as a speech coach and newspaper advisor. She is retained on an academic contract each school year and is paid a salary based on a percentage of a full-time teacher's base pay for each activity. The work schedule is flexible and varying throughout the year.

The claimant had been on a contract with the school from July 1, 2009 through June 30, 2010. On June 14, 2010, the employer extended a contract renewal offer to the claimant on the same basis as her prior contract; she was supposed to indicate her acceptance to the employer by July 6, 2010. She did not meet that deadline, and the employer initially believed the claimant was not accepting the continued employment contract; however, the claimant then returned the executed contract on October 19, 2010, and the employer accepted the late-returned contract, so the claimant has continued her employment with the employer in the 2010 – 2011 school year the same as in prior years.

The claimant had previously had full time employment with an employer for which she worked at least a 40-hour-per-week schedule; that employment ended on or about February 5, 2009. She worked her same job with the employer while also working for this prior employer. She then established an unemployment insurance benefit year effective May 3, 2009, and received full and partial benefits based upon her base period wages, primarily with her prior full-time employer. The employer was found exempt from charge in that benefit year because it was providing her with the same hours and wages as in the past, and the claimant was deemed partially unemployed and able and available for work because she was no longer working on the same full employment basis as she had been during her benefit year. (Representative's decision issued May 14, 2009 (OC 05/03/09 – reference 01)).

After the expiration of her 2009 claim year, the claimant established a subsequent unemployment insurance benefit year effective May 2, 2010. Her new base period includes only wage credits from this school employer.

The claimant has received unemployment insurance benefits in the benefit year established May 2, 2010. A prior representative's decision had been issued on November 16, 2010 (reference 03), based upon a prior administrative law judge's determination in 10A-EUCU-00699-S2T that there had been a disqualifying separation from employment between the parties.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides that a claimant is deemed partially unemployed if she is not employed at her usual hours and wages and earns less than her weekly benefit amount plus \$15.00 in other employment. Iowa Code § 96.19-38-b.

Iowa Code section 96.3-3 provides:

3. Partial unemployment. An individual who is partially unemployed in any week as defined in section 96.19, subsection 38, paragraph "b", and who meets the conditions of eligibility for benefits shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. The benefits shall be rounded to the lower multiple of one dollar.

Iowa Code section 96.19-38-b provides in part:

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.

The Agency has interpreted these sections in defining a "week of unemployment" as "a week in which an individual performs less than full-time work for any employing unit if the wages payable with respect to such week are less than a specified amount," which would be the partial earnings allowance described above. 871 IAC 24.1(138). Under 871 IAC 24.1(135)(c), "full-time week" is defined as "the number of hours or days per week of full-time work currently established by schedule, custom or otherwise for the kind of service an individual performs for an employing unit."

For the claim for the benefit year beginning May 3, 2009, the claimant's regular workweek was based upon working 40 or more hours per week during her base period immediately preceding her separation from her prior employer. In the present case, for the benefit year beginning May 2, 2010, the claimant's regular workweek must be based upon her status as of the point she filed her claim

for the subsequent benefit year. The evidence indicates that, at that point, the claimant was only working a few hours per week, and that she had no other employment with other employers. This establishes the claimant's "regular workweek" for the current benefit year for determining whether she was partially unemployed under the statutes and rules.

The claimant is currently working her regular workweek for this benefit year and is not eligible for partial unemployment insurance benefits.

871 IAC 24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

The employer has been providing the claimant with substantially the same employment as it provided during her base period. Consequently, the claimant is not qualified to receive partial unemployment insurance benefits upon the filing of her subsequent claim effective May 2, 2010.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. Iowa Code § 96.3-7-b. There is a prior determination regarding an overpayment, but that determination was based upon a decision that there had been a separation from employment as of July 6, 2010, which retrospectively turned out not to be the case. The disqualification imposed by this decision goes back to the commencement of the claim year, not only to July 6. The matter of redetermining the amount of the overpayment is remanded to the Claims Section.

DECISION:

The unemployment insurance decision dated August 2, 2010 (reference 01) is reversed. There was no separation from employment; however, in her current benefit year, the claimant is working her regular workweek at the same hours and wages as in her base period with her only base period employer. She is therefore not eligible for partial unemployment insurance benefits during the May 2, 2010 benefit year.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw