

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

HUE K NGUYEN
2714 COLLEGE AVE
DES MOINES IA 50311

DILLARD DEPARTMENT STORES INC
ATTN: MS BILLIE TREAT
1600 CANTRELL RD
LITTLE ROCK AR 72201-1110

Appeal Number: 05A-UI-07607-SWT
OC: 06/05/05 R: 02
Claimant: Respondent (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 is 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 - Able to and Available for Work
Section 96.19-38-b - Eligibility for Partial Unemployment Insurance Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated July 18, 2005, reference 02, that concluded the claimant was ineligible to receive partial unemployment insurance benefits and the employer's account was chargeable for benefits paid to the claimant since her hours and/or wages had been reduced. A telephone hearing was held on August 11, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing, with an interpreter, Phung Nguyen. David Markoff participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

The claimant worked 38 to 40 hours per week for the employer doing alterations from July 2004 to June 2005. Her rate of pay was \$8.45 per hour.

The claimant's hours were reduced to 15 to 24 hours per week in June 2005. As a result of the reduction in hours, the claimant filed a new claim for unemployment insurance benefits with an effective date of June 5, 2005. Her weekly benefit amount was determined to be \$245.00. Her base period on which her claim was based was from January 1, 2004, to December 31, 2004.

The claimant has had weeks since filing the claim for unemployment insurance benefits in which she worked less than her regular hours and had earnings less than her earnings allowance of \$260.00.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was eligible for partial unemployment insurance benefits effective June 5, 2005. The claimant filed a claim requesting partial unemployment insurance benefits for the weeks in which her earnings were less than the weekly benefit amount.

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 preponderance of the evidence establishes the claimant's regular workweek at the point she filed her new claim was 38 to 40 hours per week. She was working less than that regular workweek due to a reduction in hours effective June 2005, and she was entitled to partial unemployment insurance benefits since her earnings were less than her weekly benefit amount plus \$15.00.

The unemployment insurance law provides that an individual be able to and available for work. Iowa Code Section 96.4-3. The claimant was able to and available to work and did not restrict the number of hours she was willing to work.

The final issue is whether the employer's account is subject to charge for benefits paid to the claimant.

Iowa Code Section 96.7-2-a(2) provides in part:

(2) The amount of regular 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.

The employer's account is subject to charge for benefits because the employer did not provide the claimant with the same employment as provided during the base period.

There was some evidence presented about the claimant's termination from employment on July 1, 2005, but a decision was issued by the Agency regarding that separation on August 9, 2005, that granted benefits to the claimant. If the employer disagrees with that decision, it must appeal the decision in a timely manner to receive a hearing on that issue.

DECISION:

The unemployment insurance decision dated July 18, 2005, reference 02, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible. The employer's account will be subject to charge for benefit paid to the claimant.

saw/kjw