

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KARRIE A BERGER**  
Claimant

**APPEAL NO. 11A-UI-01043-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DES MOINES PLASTIC SURGERY PC**  
Employer

**OC: 12/05/10**  
**Claimant: Appellant (1)**

Section 96.4-3 – Eligibility for Benefits  
Section 96.19-38-b – Partial Unemployment

**STATEMENT OF THE CASE:**

Karrie A. Berger filed a timely appeal from an unemployment insurance decision dated January 14, 2011, reference 02, that denied benefits to her effective December 5, 2010 upon a finding that she was still employed under the same conditions as when initially hired. After due notice was issued, a telephone hearing was held February 24, 2011 with Office Manager Brenda Bohnenkamp participating for the employer, Des Moines Plastic Surgery, P.C. Ms. Berger did not provide a telephone number at which she could be contacted. The administrative law judge takes official notice of agency decision records.

**ISSUE:**

Was the claimant eligible for unemployment insurance benefits from December 5, 2010 through January 7, 2011?

**FINDINGS OF FACT:**

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Karrie Berger was hired as an aesthetician by Des Moines Plastic Surgery, P.C. on May 19, 2010. The employment ended January 7, 2011. Ms. Berger was scheduled to work from Tuesday through Friday. According to the terms of her hiring, she worked on a one hundred percent commission basis after her first three months of employment. Ms. Berger chose to report to work less often after December 5, 2010. Her hours were not reduced by the employer.

**REASONING AND CONCLUSIONS OF LAW:**

The question is whether the claimant is eligible for unemployment insurance benefits from the date of her original claim for unemployment insurance until the date of her separation from employment. She is not.

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".

The claimant has the burden of proof. See Iowa Code § 96.6-2. The evidence in the record establishes that Ms. Berger chose to reduce her hours after December 5, 2010. Thus, she was not partially unemployed through no fault of her own. She is not eligible for benefits.

**DECISION:**

The unemployment insurance decision dated January 14, 2011, reference 02, is affirmed. The claimant is not eligible for unemployment insurance benefits.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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