

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHENIE D RICH
Claimant

APPEAL NO: 09A-UI-15277-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE MOUNT PLEASANT NEWS INC
Employer

OC: 08/23/09

Claimant: Respondent (1)

Section 96.19-38-b – Eligibility for Partial Unemployment Insurance Benefits

STATEMENT OF THE CASE:

The Mount Pleasant News, Inc. (employer) appealed a representative's October 2, 2009 decision (reference 01) that concluded Stephenie D. Rich (claimant) was qualified to receive partial unemployment insurance benefits in conjunction with her employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 12, 2009. The claimant participated in the hearing, was represented by Erin Dooley, Attorney at Law, and presented testimony from one other witness, Sherry Teberg. Bill Gray appeared on the employer's behalf. During the hearing, Claimant's Exhibits 25 through 37 were entered into evidence. Based on the evidence, the arguments of the parties, 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 October 31, 1997. She worked as a mail room worker and inserter in the employer's daily newspaper and shopper publication business. The claimant's schedule does vary somewhat from week to week, depending on the employer's needs. For many, many years she worked every Monday, Tuesday, and Friday, with an additional day as might be needed. Beginning in about July 2009 the claimant's work pattern became virtually every Monday and Tuesday, but Fridays or other days if scheduled by the employer.

As a result in the reduction of the number of hours she believed she was suffering, the claimant established an unemployment insurance benefit year effective August 23, 2009. As a result, by statute her base period was determined to be from April 1, 2008 through March 31, 2009. Based upon the employer's report of wages to the Agency, the high quarter of the claimant's base period was the fourth quarter 2008, in which the employer paid her wages of \$1,717.00. Her hourly wages since January 1, 2008 has been \$7.25, so during that quarter she was

averaging about 18.2 hours per week. From the wage reports filed by the employer, the claimant's average weekly wage for the high quarter of her base period was determined to be \$132.14. Based upon this figure, her weekly benefit amount was calculated to be \$74.00. She has made weekly claims and received partial unemployment insurance benefits for weeks in which she earned less than \$89.00 (\$74.00 + \$15.00); as of the date of the hearing she had received partial regular unemployment insurance benefits in a gross amount of \$249.00. She has been able and available for all hours the employer is able to provide to her since August 23, 2009.

The employer argues that the claimant should not be eligible to receive any unemployment insurance benefits as she is employed "on-call" not "part-time," so that she is still employed under her "same hours and wages."

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides that a claimant is deemed partially eligible for unemployment insurance benefits if she is not employed at her usual hours and wages and earns less than her weekly benefit amount plus \$15.00 in the reduced employment. Iowa Code § 96.19-38-b. A "part-time" employee who has established a base period pattern of part-time employment can be eligible to receive unemployment insurance benefits so long as he or she is still available for work on the same basis as when the part-time wage credits were earned, where there has been reduction or elimination of their hours. 871 IAC 24.22(2)(f). An "on-call" employee is deemed to not be able and available for work as he or she is still employed under his or her same hours and wages. 871 IAC 24.22(2)(i).

There is a statutory definition of "part-time" employment or employees. Iowa Code § 96.3-6(a) provides in pertinent part:

6. Part-time workers.

a. As used in this subsection the term "part-time worker" means an individual whose normal work is in an occupation in which the individual's services are not required for the customary scheduled full-time hours prevailing in the establishment in which the individual is employed . . .

There is no corresponding definition of "on-call" employment or employees. However, "on-call" work is, by its nature sporadic and somewhat unpredictable. The "on-call" worker is not regularly scheduled but is done only on an "as-needed" basis, and typically has no set schedule. At least usually the employer initiates the contact to the "on-call" employee to summon him or her for work at the needed time. The classic examples of "on-call" employees are substitute teachers, other substitute workers, and event-only banquet workers. 871 IAC 24.22(i).

At a minimum the claimant was a "part-time" employee with a routine base schedule with some flexibility at least until July 1. Even with the additional variability added to the situation as of about July 1 the administrative law judge believed the employment continues to be "part-time" with a variable schedule rather than "on-call." Even if the employer successfully converted the claimant's position into an "on-call" position, at least for this claim year the claimant's eligibility is determined based upon her part time pattern of employment during the high quarter of her base period.

Beginning on or about August 23, 2009, the employer was not providing the claimant with substantially the same employment as it provided during the high quarter of her base period. Consequently, the claimant is qualified to receive partial unemployment insurance benefits upon the filing of her claim effective August 23, provided she was otherwise eligible. As the employer is not providing the claimant with the same hours and wages it had provided to her during the high quarter of her base period, it is subject to charge for any benefits that are consequently paid to the claimant. 871 IAC 24.23(26).

DECISION:

The unemployment insurance decision dated October 2, 2009 (reference 01) is affirmed. The claimant is eligible for partial unemployment insurance benefits for the period beginning August 23, 2009 for weeks in which she earns less than \$89.00.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css