

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KAITLIN DENNISON**

Claimant

**TENCO INDUSTRIES INC**

Employer

**APPEAL NO: 12A-UI-13038-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/30/12**

**Claimant: Appellant (1)**

Section 96.4-3 – Able and Available  
Section 96.19-38 – Partial Unemployment

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated October 25, 2012, reference 02, that held she did not meet the availability requirements of the law in order to receive partial unemployment on September 30, 2012, and benefits are denied. A telephone hearing was held on December 3, 2012. The claimant participated. Janice Lundy, HR Director, and Rhonda Johnson, Support Services Director, participated for the employer.

**ISSUES:**

The issue is whether the claimant is able and available for work.

The issue is whether the claimant is partially unemployed.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant began work on March 19, 2012 as a part-time residential instructor. The employer issued her a verbal warning on August 22 that she was behind on submitting her case documentation and it uses this as the basis for getting paid by the DHS/State of Iowa.

The employer took claimant off her current case work schedule in September when she became delinquent on submitting her documentation. It issued claimant a written counseling statement on October 2 that she had been removed from current scheduling for new cases, and she needed to complete and submit at least ten cases a week to catch-up on the 34 outstanding cases that were not done. The employer would pay her for this work.

More recently, the claimant was down to about 3 cases to submit with some work errors to correct. Claimant has not physically come into to work to get an updated report on what she needs to do to complete the past due work so she can be assigned new cases. It appears there has been a misunderstanding about claimant not submitting a time sheet to the employer in order to be paid for her work on these cases.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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".

Iowa Code section 96.19-38 provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

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.

An individual shall be deemed partially unemployed in any week in which the individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

The administrative law judge concludes the claimant does not meet the availability requirements of the law and partial unemployment benefits are denied as of September 30, 2012. In effect, claimant has caused her unavailability for work.

Claimant created the circumstance that led to her removal from the current work schedule in order to submit documentation for delinquent case reports. She was paid to do the work, and the employer cannot be reimbursed for that work until she properly documents the case reports. The employer is willing to pay claimant her regular pay rate for working on the delinquent documentation as soon as she submits a time sheet for it.

**DECISION:**

The department decision dated October 25, 2012, reference 02, is affirmed. The claimant is not eligible for partial unemployment benefits effective September 30, 2012, as she does not meet the availability requirements of the law.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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