

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEYSI E RODRIGUEZ

Claimant

APPEAL NO. 12A-UI-04647-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SHANER OPERATING CORP

Employer

OC: 03-25-12

Claimant: Respondent (1R)

Iowa Code §96.19(38)a & b – Total and Partial Unemployment
Iowa Code §96.7(2)a – Same Base Period Employment
Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 20, 2012, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on May 15, 2012. The claimant did participate along with the assistance of interpreter Noe Murillo. The employer did participate through Sondra Rivera and John Andres and was represented by Bruce Bargess of Talx UC Express.

ISSUE:

Is the claimant able to and available for work from March 25, 2012 through her date of separation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full time beginning October 4, 1996 through her separation on April 27, 2012. The claimant's separation is not the subject of this case. Over the last year of her employment the claimant's hours of work were reduced due to a slowdown in business needs. Since the time of her hire the claimant worked eight hours per day or more from 6:00 a.m. until 2:00 p.m. Monday through Friday. She did not regularly work weekends, nor was she required to at the time of her hire, nor did she work past 2:00 p.m. nor was she required to do so. The claimant's hours of work were reduced due to a slowdown in business for the hotel. The catering and restaurant showed a reduction in business due to the economy. The claimant was not required to accept work during other shifts as she had only worked weekdays during the day shift during all of her employment. The claimant's work hours dropped from an average of at least 36 per week to an average of no more than 30 per week.

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.

Iowa Code section 96.7-2-a(2) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended 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. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

Because the claimant was employed less than her regular full-time hours from March 25, 2012 through her separation on April 27, 2012, she is considered partially unemployed. Benefits may be allowed based upon reporting of weekly earnings. For whatever period the employer is not offering the same wages and hours as contemplated in the contract of hire, it may be liable for benefit charges to its account.

DECISION:

The April 20, 2012, reference 01, decision is affirmed. The claimant is partially unemployed and benefits are allowed, provided she is otherwise eligible. The account of employer (account number 0270498), may be liable for charges.

REMAND:

The separation issue is remanded to the claims section for an initial review and fact-finding.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs