

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EMILY S KISHMAN

Claimant

APPEAL NO. 09A-UI-06109-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BLACK HAWK COUNTY

Employer

Original Claim: 03/22/09

Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

Black Hawk County (employer) appealed a representative's April 13, 2009 decision (reference 01) that concluded Emily S. Kishman (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 15, 2009. The claimant participated in the hearing and was represented by Teresa Rastede, attorney at law. June Watkins appeared on the employer's behalf and presented testimony from one other witness, Dominic Peters. During the hearing, Employer's Exhibit One and Claimant's Exhibit A 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 November 20, 2007. She works part time as a youth shelter resident counselor. She works swing shifts.

In early 2009, the employer decreased the number of staff on each shift from three to two. In late March 2009, the employer additionally decreased the length of shifts. As a result, the claimant established an unemployment insurance benefit year effective March 22, 2009.

The high quarter of her base period was the first quarter of 2008; the employer reported paying wages to her in that quarter of \$8,168.00. Her hourly wage at that time was \$12.01 plus a shift differential rate of \$0.25, so effectively \$12.26 per hour. She therefore worked approximately 666 hours in that quarter, averaging about 51 hours per week. Her unemployment insurance benefit eligibility is based upon the wages in this quarter. Her weekly benefit amount was calculated to be \$355.00. Even if the first quarter wages might normally be higher than the other quarters due to the claimant working additional hours to cover a routine extended absence

by another employee during that quarter, even in the second quarter of 2008 she was averaging about 39 hours per week.

The claimant has had some pay increases since the second quarter of 2008, and is currently effectively making \$13.24 per hour. Due to the reduction of staffing and the shortening of shifts, since establishing her claim for unemployment insurance benefits the claimant is frequently working less than 39 hours per week, sometimes averaging only about 23, 24, or 26 hours per week. On her weekly claims, she has been reporting the wages earned for her hours worked during that week. The hours worked include occasionally picking up additional shifts to cover absences of other staff. While there have been a few occasions where the claimant could not work an additional shift that might have been available, or could not be reached prior to the employer reaching someone else to cover the available shift, she has worked all of the shifts for which she was regularly scheduled.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides that a claimant is deemed partially 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 other employment. Iowa Code §96.19-38-b; 871 IAC 24.23(26).

Beginning at least on or about March 22, 2009, the employer was not providing the claimant with substantially the same employment as it provided during her base period. Consequently, the claimant is qualified to receive partial unemployment insurance benefits for weeks she does not earn at least \$370.00 (\$355.00 plus \$15.00), provided she is otherwise eligible, including by being able and available to work her regularly scheduled shifts. Under her current wage, this would equate to working at least 27.95 hours per week.

DECISION:

The unemployment insurance decision dated April 13, 2009 (reference 01) is affirmed. As of March 22, 2009, the claimant is qualified for partial unemployment insurance benefits for weeks in which she earns less than \$370.00, so long as she remains otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw