

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHLEEN K BACON
Claimant

APPEAL NO: 14A-UI-03401-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

PELLA CORPORATION
Employer

**OC: 02/23/14
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant appealed a department decision dated March 25, 2014, reference 01, that held she was still employed part-time working whenever work was available as of February 23, 2014, and benefits are denied. A telephone hearing was held on April 21, 2014. The claimant participated. Pam Fitzsimmons, HR Manager, Derek Westhoff, Manager, and Kevin Bonnstetter, Production Manager, 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 witness testimony and having considered the evidence in the record, finds: The claimant began working for the employer on April 18, 2005. The claimant worked as an assembler.

The employer does experience a business slow-down during the winter months of January, February and March of each year. Claimant filed an unemployed claimant effective February 23, 2014 when her work hours were reduced. Her weekly benefit amount is \$422.

The department earnings record show claimant's average weekly wage during her employment base period is \$682.18. The employer reported claimant earnings for the fourth quarter 2013 in the amount of \$10,066 that is weekly average earnings of \$774.

Claimant reported weekly earnings of \$258 for the weeks ending March 1, 15, 22 and 29. She is eligible for a partial benefit of \$269 for these weeks if she is considered partially unemployed. Claimant had been working twenty (20) weekly hours prior to her claim filing based on a job

share program with another employee. Her work hours were reduced to fourteen (14) prior to filing for unemployment. With the exception of claimant declining two extra work hours for one week during March 2014, claimant has made herself available for all regular scheduled work. Claimant ceased claiming the week ending March 29 when her hours picked up.

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 claimant does meet the availability requirements of the law for partial unemployment benefits effective February 23, 2014.

Claimant is working substantially less than her regular job share hours (20 down to 14), and she has been available to work those hours. The reduction of hours is due to an employer business slow-down not claimant failing to report for work.

Claimant averaged weekly earnings of \$774 in the quarter before this reduction and in March 2014 during the period she filed for unemployment she had four weeks where she earned only \$258. Her base period weekly average (based on four quarters) is \$682.18.

While there is no specific formula to measure a wage reduction for partial unemployment eligibility, claimant loss of earnings due to the employer business slow-down is substantial even given the job share program.

DECISION:

The department decision dated March 25, 2014, reference 01, is reversed. The claimant is eligible for partial unemployment benefits effective February 23, 2014, as she meets the availability requirements of the law.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs