

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 – EI

LORETTA J HENDRICKSON
Claimant

APPEAL NO. 07A-UI-02466-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 01/21/07 R: 03
Claimant: Respondent (5)

Section 96.19-38-b –Partially Unemployed

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. (employer) appealed a representative's February 27, 2007 decision (reference 01) that concluded Loretta J. Hendrickson (claimant) was eligible to receive benefits because she was not working as many part-time hours as she worked during her base period. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 27, 2007. The claimant participated in the hearing. Tressa Gram, an assistant manager, appeared on the employer's behalf. 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 partially unemployed or does she still work in the same manner that she worked during her base period?

FINDINGS OF FACT:

The claimant started working for the employer on May 20, 1997. During her employment the claimant has worked full-time either in the lay away department or at the service desk. The claimant works a day shift.

Sometimes there is a scheduling oversight and the claimant is not scheduled five a days a week. When this occurs she reviews the schedule to see where she can pick up extra hours. The claimant is usually able to pick up extra hours so that she works five days a week.

The week ending January 27, the employer only scheduled the claimant to work two days. When the claimant looked to find extra hours that she was available to work, she could not find any. The claimant then established a claim for unemployment insurance benefits during the week of January 21, 2007. The claimant did not think to ask Gram about where she could work three more days that week.

Since the claimant established a claim for benefits, her average weekly wage during her base period equals \$364.00. The claimant's maximum weekly benefit amount is \$205.00. The

claimant reported the wages she earned during the week ending January 27 and received only partial unemployment insurance benefits. The claimant also filed claims for the weeks ending February 3 and 10, but did not receive any benefits these weeks because she earned too much in wages.

REASONING AND CONCLUSIONS OF LAW:

A claimant is deemed partially unemployed when she works less than the regular full-time work and earns less than her maximum weekly benefit amount plus \$15.00. Iowa Code § 96.19-38-b. Each week a claimant files a claim for benefits, she must be able to and available for work. Iowa Code § 96.4-3. The claimant established she was able to and available for work the week ending January 27, 2007.

If the representative's decision relied on 871 IAC 24.23(26), this reliance was misplaced; because the claimant did not work part-time, she worked full-time. As a result of someone's scheduling mistake, the claimant was only scheduled to work two days instead of five days during the week ending January 27, 2007. The claimant was temporarily partially unemployed this one week. Since the claimant filed a claim during the same week her hours were inadvertently reduced, the claimant is eligible to receive benefits for the week ending January 27, 2007. The claimant has not received benefits for any other week.

DECISION:

The representative's February 27, 2007 decision (reference 01) is modified with no legal consequence. As the result of a scheduling mistake, the claimant's hours were temporarily reduced and the claimant is eligible to receive partial unemployment insurance benefits during the week ending January 27, 2007. If in the future the claimant's hours are again inadvertently reduced, she must reopen her claim and establish her eligibility to receive unemployment insurance benefits.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw