

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBORAH L GILSON
Claimant

APPEAL NO. 14A-UI-12344-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KINSETH HOTEL CORPORATION
Employer

OC: 11/24/13
Claimant: Appellant (4)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.4(3) – Still Employed Same Hours and Wages
Iowa Code Section 96.7(2) – Employer Liability

STATEMENT OF THE CASE:

Deborah Gilson filed a timely appeal from the November 25, 2014, reference 01, decision that denied benefits effective October 26, 2014 based on an Agency conclusion that she was working enough hours in her employment such that she could not be considered “available” for work for unemployment insurance purposes. After due notice was issued, a hearing was held on February 9, 2015. Ms. Gilson participated. Jerry Sander of Employers Unity, L.L.C., represented the employer. Mr. Sander was the employer’s sole witness. The hearing in this matter was consolidated with the hearing in Appeal Number 14A-UI-13297-JTT. Exhibits One and Two and Department Exhibits D-1, D-2 and D-3 were received into evidence. The administrative law judge took official notice of the Agency’s administrative record of quarterly wages reported by the employer for the claimant (WAGE-A).

ISSUES:

Whether the claimant has been able to work and available for work since she established the additional claim that was effective October 26, 2014.

Whether the claimant has been partially unemployed since she established the additional claim that was effective October 26, 2014.

Whether the employer’s account may be assessed for benefits paid to the claimant.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Deborah Gilson has been employed by Kinseth Hotel Corporation, d/b/a Holiday Inn, as a full-time housekeeper since 1991 and continues in the employment. The employer defines full-time employment as 30 hours per week or more. Ms. Gilson’s wage is \$10.00 per hour. The specific number of work hours Ms. Gilson receives from the employment depends on the number of

rooms she is assigned to clean, which in turn depends on the employer's level of business. The employer's business slows during the colder months.

Ms. Gilson established an additional claim for benefits that was effective October 26, 2014 in response to a reduction in the number of work hours the employer had available for her. The additional claim for benefits was based on a November 24, 2013 original claim date. At the time Ms. Gilson established the original claim, Workforce Development calculated her weekly unemployment insurance benefit amount at \$281.00. The claim year that began for Ms. Gilson on November 24, 2013 expired on November 22, 2014.

Ms. Gilson's base period of employment for purposes of the claim year that started for her on November 24, 2013 consists of the third and fourth quarters of 2012 and the first and second quarters of 2013. Ms. Gilson's wages during those quarters were as follows:

<u>Quarter/Year</u>	<u>Wages</u>	<u>Average Weekly Wages (rounded)</u>
3/2012	\$6,468.55	\$498.00
4/2012	\$4,058.15	\$312.00
1/2013	\$4,096.14	\$315.00
2/2013	\$4,047.85	\$311.00

Ms. Gilson's more recent quarterly wages have been as follows:

<u>Quarter/Year</u>	<u>Wages</u>	<u>Average Weekly Wages (rounded)</u>
3/2013	\$7,088.40	\$545.00
4/2013	\$4,765.40	\$367.00
1/2014	\$1,274.80	\$98.00
2/2014	\$4,408.65	\$339.00
3/2014	\$7,484.50	\$576.00
4/2014	\$4,201.80	\$323.22

Ms. Gilson's weekly wages and work hours between October 26, 2014 and November 22, 2014 were as follows:

<u>Benefit Week End Date</u>	<u>Wages</u>	<u>Hours Worked</u>
11/01/14	295.00	29.5
11/08/14	338.00	33.8
11/15/14	353.00	35.3
11/22/14	273.00	27.3

During the above four-week period, Ms. Gilson worked all the hours the employer had available for her.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

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. Iowa Code Section 96.19(38)(b).

Iowa Code section 96.7(1) and (2) provides, in relevant part, as follows:

Employer contributions and reimbursements.

1. Payment. Contributions accrue and are payable, in accordance with rules adopted by the department, on all taxable wages paid by an employer for insured work.

2. Contribution rates based on benefit experience.

a. (1) The department shall maintain a separate account for each employer and shall credit each employer's account with all contributions which the employer has paid or which have been paid on the employer's behalf.

(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.

(a) 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.

During the four-week period between the additional claim for benefits and expiration of the benefit year, Ms. Gilson had two weeks where she was able and available for work, but partially unemployed. Those were the weeks that ended November 1 and 22, 2014, when Ms. Gilson worked less than the 30 hours per week and had wages that did not exceed her weekly benefit amount by \$15.00. Ms. Gilson is eligible for benefits for those two weeks, provided she meets all other eligibility requirements. Because the employer had less work available for Ms. Gilson than usual, the employer's account may be assessed for benefits paid to Ms. Gilson for those weeks. Ms. Gilson also had two weeks when she was working in excess of 30 hours and had wages that exceeded her weekly benefit amount by more than \$15.00. Those were the weeks that ended November 8 and 15, 2014. Ms. Gilson was not eligible for benefits for those weeks because she was not partially unemployed. In the language of the unemployment insurance law, Ms. Gilson did not meet the "availability" requirement during those two weeks because she was working so much. See Iowa Administrative Code section 871-24.23(23).

DECISION:

The November 25, 2014, reference 01, decision is modified as follows. The claimant was able and available, but partially unemployed during the benefit weeks that ended November 1 and 22, 2014. The claimant is eligible for benefits for those weeks, provided she is otherwise eligible. The employer's account may be charged for benefits paid for those two weeks. The claimant was not partially unemployed, and not eligible for benefits for the weeks that ended November 8 and 15, 2014.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs