

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICOLE S BEHRENS
Claimant

APPEAL NO: 10A-UI-03774-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

INTELISTAF HEALTHCARE INC
Employer

OC: 01/10/10
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer appealed a department decision dated March 1, 2010, reference 02, that held the claimant was eligible for benefits effective January 6, 2010, as she met the availability requirements of the law. A telephone hearing was held on April 26, 2010. The claimant participated. The employer did not participate.

ISSUE:

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 testimony of the claimant and having considered the evidence in the record, finds: The claimant began working for her employer on December 4, 2008, as a certified nursing assistant (C.N.A.). The claimant was told she could be assigned to work 40 hours or more each week, and did so during the base period of her employment. The claimant averaged 40 hours or more weekly work up to January 2010, when she worked only five-days or about 40-hours for the month. The claimant filed her unemployment claim due to a work slow-down. There was only one day she turned down a job due to eye doctor appointments for her children.

The employer failed to respond to the hearing notice.

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 that the claimant was able and available for work due, and is entitled to partial benefits effective January 10, 2010.

The claimant's contract for hire and base period employment history is working 40 or more hours each week. The claimant has worked substantially all the work made available to her and she is partially unemployed in any week she works less than full-time hours.

DECISION:

The department decision dated March 1, 2010, reference 02, is affirmed. The claimant is eligible for benefits effective January 10, 2010, as she was able and available for work, and partially unemployed.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs