

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSICA A JOHNSON
Claimant

APPEAL NO. 11A-UI-02258-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WISE MOTELS INC
Employer

OC: 01/02/11
Claimant: Respondent (1)

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:

The employer filed a timely appeal from the February 1, 2011, reference 02, decision that allowed benefits based on an Agency conclusion that the claimant was partially unemployed. After due notice was issued, a hearing was held on March 16, 2011. Claimant participated. Sue Shepherd, Manager, represented the employer. The administrative law judge took official notice of the Agency's administrative record (DBRO) of wages reported by or for the claimant and benefits paid to the claimant.

ISSUES:

Whether the claimant has been able to work and available for work since establishing her claim for benefits.

Whether the claimant was partially unemployed from her employment.

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: Jessica Johnson has been employed by Wise Motels, Inc., as a part-time laundry person since May 2, 2010 and continues in the employment. Ms. Johnson's hourly wage is \$8.75. The employer's motel has a peak season, summer, and a slow-season, winter. In October 2010, Ms. Johnson's work hours decreased from 20 or more per week to about 18.5 per week. In December 2010, Ms. Johnson's work hours decreased to about 7.5 to 9 hours per week. That change came about, in part, as a result of the employer giving Ms. Johnson's laundry hours to the head housekeeper. Since the end of December/beginning of January, Ms. Johnson's work hours have decreased even further.

In response to the decrease in available work hours, Ms. Johnson established a claim for unemployment insurance benefits that was effective January 2, 2011. Ms. Johnson's weekly

benefit amount was set at \$156.00. Since Ms. Johnson established her claim, she has not refused any work the employer had available to her. Ms. Johnson did request March 3-6 off, but then did not claim unemployment insurance benefits for the week that ended March 5, 2011.

Ms. Johnson's weekly wages and weekly benefits have been as follows:

Benefit week end date	Wages reported	Approx # of hours	Benefits paid
01/08/11	37.00	4.2	156.00
01/15/11	35.00	4	156.00
01/22/11	0 .00	0	156.00
01/29/11	38.00	4.3	156.00
02/05/11	81.00	9.26	114.00
02/12/11	71.00	8.1	124.00
02/19/11	124.00	14.17	71.00
02/26/11	35.00	4	156.00
03/12/11	35.00	4	156.00

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".

The weight of the evidence establishes that the claimant had been available for the same part time work since she filed her claim for benefits, with the exception of the benefit week ending March 5, 2011.

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).

Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed. 871 IAC 24.23(26). Contract for hire merely means the established conditions of the employment. See Wiese v. Iowa Dept. of Job Service, 389 N.W.2d 676, 679 (Iowa 1986).

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.

[Emphasis added.]

The weight of the evidence in the record establishes that Ms. Johnson has indeed been partially unemployed since she established her claim for benefits. Ms. Johnson is eligible for unemployment insurance benefits effective January 2, 2011, provided she meets all other eligibility requirements. Because Ms. Johnson is not receiving the same number of hours she received during her base period, the employer's account may be charged for benefits paid to the claimant. Ms. Johnson shall continue to report her weekly gross wages. If the employment ends, the employer will need to notify Workforce Development so that the effect of the separation on Ms. Johnson's eligibility for benefits, and the employer's liability for benefits, may be addressed.

DECISION:

The Agency representative's February 1, 2011, reference 02, is affirmed. The claimant has met the work availability requirement since she filed her claim, with the exception of the week ending March 5, 2011. The claimant has been partially unemployed since she established her claim for benefits. The claimant is eligible for unemployment insurance benefits effective January 2, 2011, provided she meets all other eligibility requirements. The claimant did not claim benefits for the week ending March 5, 2011 and would not be eligible for benefits for that week. Because the claimant is not receiving the same number of hours she received during her base period, the employer's account may be charged for benefits paid to the claimant. The claimant

shall continue to report her weekly gross wages. If the employment ends, the employer will need to notify Workforce Development so that the effect of the separation on the claimant's eligibility for benefits, and the employer's liability for benefits, may be addressed.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css