

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DOTTI I BURKE**  
Claimant

**APPEAL NO. 08A-UI-05047-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HUNTINGTON LLC**  
Employer

**OC: 04/27/08 R: 03**  
**Claimant: Respondent (4-R)**

Section 96.4-3 – Able and Available  
Section 96.19-38-b – Eligibility for Partial Unemployment Insurance Benefits  
Section 96.5-1 – Voluntary Quit  
871 IAC 24.27 – Voluntary Quit of Part-time Job

**STATEMENT OF THE CASE:**

Huntington, L.L.C. (employer) appealed an unemployment insurance decision dated May 15, 2008, (reference 03), that concluded Dotti I. Burke (claimant) was eligible to receive unemployment insurance benefits in conjunction with her employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 10, 2008. The claimant participated in the hearing. John Huntington appeared on the employer's behalf. Administrative notice is being taken of the Agency's wage records. Also, a determination is being made regarding a separation from employment that was not included on the notice of hearing but which the administrative law judge has concluded necessary in order to provide the most equitable resolution to the matter. If either party objects to the use of the Agency's wage records or to the consideration and determination on the separation issue, the objection must be made in writing within seven calendar days of the date of this decision, in which case the record will be reopened for an additional hearing. 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.

**ISSUES:**

Was the claimant eligible for full or partial unemployment insurance benefits by being able and available for work on the same basis as when her base period wages were accrued?

Has there been an at least temporary separation of employment between the claimant and the employer from her established position?

**FINDINGS OF FACT:**

After a prior period of employment with the employer, the claimant most recently started working for the employer on October 23, 2006. She worked part time as a server in the employer's restaurant. The claimant worked approximately 4.25 hours per week; her regular schedule was

to work Friday nights from 5:00 p.m. to about 9:00 p.m. Her last day working that schedule was May 23, 2008.

The claimant filed a new claim for unemployment insurance benefits with an effective date of April 27, 2008 after a separation from another full-time employer. The claimant's high quarter of her claim year's base period was the first quarter of 2007. The employer paid the claimant \$673.00 in wages during that quarter. Based upon the wages from that quarter, the claimant's weekly benefit amount was determined to be \$255.00.

The claimant has been taking classes for a new career; she had enrolled in a class to be held over the summer of 2008. The initial schedule of that class would not have interfered with her regular Friday night work schedule for the employer. However, on or about May 12 the claimant learned that the summer school schedule was being changed so that she would have class from 4:00 p.m. to 6:00 p.m. Monday through Friday, thus precluding her from working her regular Friday night schedule for the employer. She advised the employer of this change in circumstance, and her last night of work on the Friday night schedule was May 23. She has been allowed to work on an on-call, spot fill-in basis since that time when she is available, which as of the date of the hearing had occurred one time, June 8. She hopes to be able to return to the employer and to the Friday night schedule upon the completion of her summer school class in early July.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant can be eligible for partial unemployment insurance benefits if she has separated from her regular job and earns less than her weekly benefit amount plus \$15.00 in other employment. Iowa Code § 96.19-38-b. The claimant here was separated from her regular full-time job with another employer and so generally would be eligible for at least partial benefits.

However, with respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, be available for work, and be earnestly and actively seeking work. Iowa Code § 96.4-3. For a claimant who has been employed on a part-time basis to be considered able and available for work, she must be "available to the same degree and to the same extent as when the wage credits were accrued." 871 IAC 24.22(2)f. Here, due to a change attributable to the claimant's personal circumstances, not some modification to her hours imposed by the employer, the claimant is no longer available for work with the employer to the same degree and extent as when her wage credits were accrued. Thus, even though the employer had work available to the claimant under her regular hours and wages, the claimant did not work those hours since she was not available. Ordinarily, this conclusion would result in a determination that the claimant is therefore not able and available for work and therefore ineligible to receive unemployment insurance benefits until such time as her regular availability returns. There is no provision in the law under which a person can be determined only "partially unavailable" when she is no longer available for her part-time job and therefore eligible for full or partial unemployment insurance benefits.

In order to avoid the result of a full disqualification of the claimant, the administrative law judge believes a more equitable result can be reached by treating the change in circumstances between the claimant and the employer to be an at least temporary separation from the original employment arrangement. As it was the claimant's intent and choice to no longer continue working her regular Friday night schedule as of the week beginning May 25, 2008 so that she could take the class, the separation is considered to be a voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1; 871 IAC 24.25(26). The job, however, was

part-time, and the claimant has sufficient wages from other employers to qualify to receive unemployment insurance benefits based on the wages from those employers. 871 IAC 24.27. The employer's account will not be subject to charge for benefits paid to the claimant. This will result in a reduction of the claimant's weekly benefit amount to approximately \$224.00 per week as of the week beginning May 25. Iowa Code § 96.3-4; 871 IAC 24.27. Once the claimant has requalified by earning ten times her weekly benefit amount in additional wages, the wages paid by the employer in the claimant's high quarter can again be used to recalculate and increase her weekly benefit amount back to the \$255.00 amount. 871 IAC 24.27.

This matter is remanded to the Claims Section for a recalculation of the claimant's weekly benefit amount as of the week beginning May 25, 2008 and any partial benefit overpayment that results from that recalculation.

**DECISION:**

The unemployment insurance decision dated May 15, 2008 (reference 03), is modified in favor of the employer. The claimant effectively quit her part-time employment with the employer and, as a result, is disqualified to receive unemployment insurance benefits based upon those wages until she has requalified. However, since the employment was part-time, and the claimant has sufficient wages from other employers to qualify to receive unemployment insurance benefits, she is eligible for reduced benefits based on wages other than from the employer. The employer's account is not subject to charge. This matter is remanded to the Agency for a recalculation of the claimant's weekly benefit amount and any overpayment that results from that recalculation.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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