

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WENONA WILSON
Claimant

APPEAL NO: 11A-UI-12462-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

**OC: 07/31/11
Claimant: Appellant (4)**

Section 96.19-38-b – Eligibility for Partial Unemployment Insurance Benefits
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Wenona Wilson (claimant) appealed a representative's September 15, 2011 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits in conjunction with her employment with Express Services, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 13, 2011. The claimant participated in the hearing. The employer received the hearing notice and responded by calling the Appeals Section on October 7, 2011 to indicate that Jodi Korelski would be available at the scheduled time for the hearing at a specified telephone number. However, when the administrative law judge called that number at the scheduled time for the hearing, Ms. Korelski indicated that the employer was not protesting the claim and that the employer was not going to participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant employed by the employer for less than her usual hours and wages even though she remains able and available for work, and is she therefore eligible for full or partial unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on or about October 25, 2010. She works full time as a debris monitor in the business client's flood demolition project. She is normally to work 40 hours per week at an hourly rate of \$15.00.

The claimant established an unemployment insurance benefit year effective July 31, 2011. Her weekly benefit amount was calculated to be \$337.00. Since July 31 there have been weeks where the claimant has worked less than 40 hours and earned less than \$352.00 (\$337.00 +\$15.00). For each of the weeks the claimant had reduced hours except for the week ending September 10, the reason the hours were reduced was because of problems with contractors utilized by the employer's business client, resulting in the business client having less than

40 hours of work for the claimant to perform. For the week ending September 10, the claimant had no hours because she was out of town for personal reasons.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides that a claimant is deemed partially unemployment insurance benefits if she is not employed at her usual hours and wages and earns less than her weekly benefit amount plus \$15.00. Iowa Code § 96.19-38-b.

Beginning at least by July 31, 2011, the employer was not providing the claimant with substantially the same employment as it had previously provided. Consequently, the claimant is qualified to receive partial unemployment insurance benefits upon the filing of her claim effective July 31, 2011, provided she was otherwise eligible.

To be eligible for benefits for any particular week, the claimant must file a weekly claim for that week reporting her gross wages from all employers earned (not paid) for that week; the amount of her eligibility will then be determined pursuant to the formula set out by the statute. 871 IAC 24.52(8); Iowa Code § 96.3-3. The claimant has indicated that for some of the past few weeks she may have miscalculated the number of hours she worked and misreported the gross wages earned for that week on her weekly claim; she has been instructed to go to her local Agency office to seek to correct her filings for those weeks before benefits are issued for those weeks.

Implicit with the concept of allowing partial benefits for a claimant who is working fewer hours is that the reduction bringing the earned wages low enough to qualify for partial benefits has been because of the choice of the employer, not that the claimant is not able or willing to work the hours available to her. Rather, she must remain available for work on the same basis as when she was previously working. Iowa Code § 96.4-3; 871 IAC 22(2)(a). The reason the claimant's earnings for the week ending September 10, 2011 were zero was because she was not able and available to work any hours the employer would have had available to her because she was out of town, and she is thus ineligible for unemployment insurance benefits for that period. 871 IAC 24.23(25),(29).

DECISION:

The unemployment insurance decision dated September 15, 2011 (reference 02) is modified in favor of the claimant. Except for the week ending September 10, 2011, the claimant is eligible

for partial unemployment insurance benefits beginning July 31, 2011 for weeks in which she works less than 40 hours and earns less than \$352.00. The claimant is not eligible for partial unemployment insurance benefits for the week ending September 10, 2011 as she was not able and available for work.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs