

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBORAH L GILSON
Claimant

APPEAL NO. 14A-UI-13297-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KINSETH HOTEL CORPORATION
Employer

OC: 11/23/14
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 December 19, 2014, reference 01, decision that denied benefits effective November 23, 2014, based on an Agency conclusion that she not partially unemployed. 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-12344-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 original claim that was effective November 23, 2014.

Whether the claimant has been partially unemployed since she established the original claim that was effective November 23, 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 original claim for benefits that was effective November 23, 2014 after the expiration of a prior benefit year and in response to a reduction in the number of work hours the employer had available for her. At the time Ms. Gilson established the new original claim, Workforce Development calculated her weekly unemployment insurance benefit amount for the new claim year at \$308.00.

Ms. Gilson's base period of employment for purposes of the claim year that started for her on November 23, 2014 consists of the third and fourth quarters of 2013 and the first and second quarters of 2014. Ms. Gilson's wages during those quarters and for more recent quarters were as follows:

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 since the new claim year started on November 23, 2014 have been as follows:

<u>Benefit Week End Date</u>	<u>Wages</u>	<u>Hours Worked</u>
11/29/14	225.00	22.5
12/06/14	295.00	29.5
12/13/14	355.00	35.5
12/20/14	283.00	28.3
12/27/14	235.00	23.5
01/03/15	333.00	33.3
01/10/15	295.00	29.5
01/17/15	343.00	34.3
01/24/15	413.00	41.3
01/31/15	440.00	44.0
02/07/15	285.00	28.5

Since the new claim year started, Ms. Gilson has 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.

Between the effective date of the new claim year and the February 9, 2015 appeal hearing date, Ms. Gilson had six weeks where she was able and available for work, but partially unemployed. Those were the weeks that ended November 29, December 6, December 20, and

December 27, 2014, along with the weeks that ended January 10 and February 7, 2015. During each of those weeks, 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 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.

Between the effective date of the new claim year and the February 9, 2015 appeal hearing date, Ms. Gilson also had five 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 December 13, 2014 and the weeks that ended January 3, January 17, January 24, and January 31, 2015. 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 weeks because she was working so much. See Iowa Administrative Code section 871-24.23(23).

DECISION:

The December 19, 2014, reference 01, decision is modified as follows. The claimant was able and available, but partially unemployed during the benefit weeks that ended November 29, December 6, December 20, and December 27, 2014, along with the weeks that ended January 10 and February 7, 2015. The claimant is eligible for benefits for those weeks, provided she meets all other eligibility requirements. The employer's account may be assessed for benefits paid to the claimant for those weeks.

The claimant was not partially unemployed, and not eligible for benefits for the week that ended December 13, 2014 and the weeks that ended January 3, January 17, January 24, and January 31, 2015

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs