

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NIKKI J ANDERSON**  
Claimant

**APPEAL NO. 09A-UI-01952-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ECONO LODGE**  
Employer

**OC: 12/07/08 R: 04  
Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated February 2, 2009, reference 01, that concluded the claimant was eligible to receive partial unemployment insurance benefits since her hours had been reduced. A telephone hearing was held on February 26, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Sharon Morgan participated in the hearing on behalf of the employer. Exhibits One and Two were admitted into evidence at the hearing. Official notice is taken of the Agency's records regarding the claimant's unemployment insurance claim, which show the claimant's average weekly wage from the employer during her base period was \$201.44, based on wages of \$3,117.50 (3rd quarter 2007), \$1,539.28 (4th quarter 2007), \$2,377.37 (1st quarter 2008) and \$3,440.54 (2nd quarter 2008). If a party objects to taking official notice of these facts, the objection must be submitted in writing no later than seven days after the date of this decision.

**FINDINGS OF FACT:**

The claimant started working for the employer as a housekeeper and front desk worker May 5, 2005. She continues to work for the employer. Her current rate of pay is \$7.75 per hour. The claimant's average weekly wages based on her base period wages with the employer was \$201.44, which would be about 26 hours per week.

The claimant's hours were reduced to about 9.5 hours during the week ending December 12, 2008. As a result of the reduction in hours, the claimant filed a new claim for unemployment insurance benefits with an effective date of December 7, 2008. Her weekly benefit amount was determined to be \$175.00.

The claimant has had weeks since filing the claim for unemployment insurance benefits in which she worked less than her regular hours and had earnings less than her earnings allowance of \$190.00.

On December 22, 2008, the claimant was absent from work due to having a sick child but was available for the rest of her scheduled work. On January 12, 2009, the claimant was absent but

she was available for the rest of her scheduled work. There were times when the claimant called a supervisor before her shift and was told she wasn't needed and when she was called by a supervisor and told that she wasn't needed.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was eligible for partial unemployment insurance benefits effective December 7, 2008. The claimant filed a claim requesting partial unemployment insurance benefits for the weeks in which her earnings were less than her earnings limit. The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The employer listed a number of days as days the claimant had called in and said she was not able to work. The claimant's testimony that there were only two days when she was unable to work her scheduled hours is more credible.

Iowa Code section 96.3-3 provides:

3. Partial unemployment. An individual who is partially unemployed in any week as defined in section 96.19, subsection 38, paragraph "b", and who meets the conditions of eligibility for benefits shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. The benefits shall be rounded to the lower multiple of one dollar.

Iowa Code section 96.19-38-b provides in part:

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.

The preponderance of the evidence establishes the claimant's regular workweek at the point she filed her new claim was approximately 26 hours per week. She was working less than that regular workweek due to a reduction in hours effective December 7, 2008, and she was entitled to partial unemployment insurance benefits since her earnings were less than her weekly benefit amount plus \$15.00.

The unemployment insurance law provides that an individual be able to and available for work. Iowa Code section 96.4-3. The claimant was able to and available to work and did not restrict the number of hours she was willing to work. The unemployment rules state that as long as a claimant is available to work during a majority of the week, she is considered available for unemployment insurance purposes. 871 IAC 24.23(29).

The final issue is whether the employer's account is subject to charge for benefits paid to the claimant.

Iowa Code section 96.7-2-a(2) provides in part:

(2) The amount of regular 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.

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.

The employer's account is subject to charge for benefits because the employer did not provide the claimant with the same employment as provided during the base period.

**DECISION:**

The unemployment insurance decision dated February 2, 2009, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible. The employer's account will be subject to charge for benefit paid to the claimant.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs