

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

REBECCA L LUNSFORD

Claimant

APPEAL NO: 09A-UI-09298-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARSHALLTOWN COMM SCHOOL DIST

Employer

OC: 05/03/09

Claimant: Appellant (4/R)

Section 96.4-3 – Able and Available

Section 96.19-38-b – Eligibility for Partial Unemployment Insurance Benefits

STATEMENT OF THE CASE:

Rebecca L. Lunsford (claimant) appealed a representative's June 19, 2009 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits in conjunction with her employment with Marshalltown Community School District (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 15, 2009. The claimant participated in the hearing. Kevin Posekany appeared on the employer's behalf. 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.

ISSUE:

Was the claimant eligible for full or partial unemployment insurance benefits by being able and available for work, but her regular full time hours were not made available to her by the employer?

FINDINGS OF FACT:

The claimant started working for the employer on April 10, 2008. She works full time (35 hours per week) as a cook during the academic year, Monday through Friday, seven hours per day, at an hourly rate of \$10.22. During the week of May 3 through May 9, the school was shut down due to the H1N1 virus on May 4, May 5, and May 6, so the employer could not provide work to the claimant for those days.

The claimant's supervisor filed an unemployment insurance benefit claim for the claimant and other employees on their behalf. The claim was originally set up with an effective date of May 10, 2009. The representative's decision in this case indicated that the claimant was not able and available for work effective May 10, as she was fully employed by the employer again by that date, which was correct. However, in the interim the claimant's claim date has been back dated to May 3, 2009. A weekly claim was filed on her behalf reporting wages earned for the week ending May 9 in the amount of \$147.00. However, while the claimant did work two

days that week, May 7 and May 8, her gross earnings for those days was actually only \$143.08 (\$10.22 x 14 hours).

REASONING AND CONCLUSIONS OF LAW:

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. The unemployment insurance law provides that a claimant is deemed partially unemployed 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.

As set up in the representative's decision, the question was whether the claimant was eligible for full or partial unemployment insurance benefits beginning May 10 as not being fully employed. Beginning at that time, it is correct that the claimant was fully employed under her regular hours and wages and therefore not eligible for partial benefits. However, the prior week ending May 9, the employer only provided work for two of the regular five work days; if the claimant's earnings for those two days that week was less than \$169.00 (\$154.00 + \$15.00), she would be eligible for partial benefits for that week.

The claimant's earnings for the week ending May 9 were only \$143.00 (rounded).

Iowa Code § 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.

Under this formula, after deduction for the wages actually earned for the week ending May 9, 2009, the claimant's remaining eligibility for that week is approximately \$50.00.

The claimant was only partially employed during the benefit week ending May 9 and is eligible for partial benefits for that week. The matter will be remanded to the Claims Section for final calculation and issuance of the appropriate partial benefit payment.

DECISION:

The representative's June 19, 2009 decision (reference 01) is modified in favor of the claimant. The claimant was employed in her regular hours and wages beginning May 10 and therefore was not eligible for partial benefits at that time. However, for the week ending May 9 the employer only partially employed the claimant, and she is eligible for partial benefits for that

week. The matter is remanded to the Claims Section for final calculation and payment of the partial benefit.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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