

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**KIM L JOHNSON
3421 AVE N #123
FORT MADISON IA 52627**

**REMEDY TEMPORARY SERVICES INC
c/o FRICK UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 05A-UI-00125-H2T
OC: 03-28-04 R: 04
Claimant: Appellant (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.19-38-a & b – Total and Partial Unemployment

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 27, 2004, reference 03, decision that denied benefits. After due notice was issued, a hearing was held on January 21, 2005. The claimant did participate along with her witness Minh Jamison. The employer did participate through Candy Welch, On Site Supervisor. After due notice the hearing was continued and held on February 4, 2005. The claimant did participate along with her witness Minh Jamison through the interpretation of Wenn Pham. The employer did not participate.

FINDINGS OF FACT:

The claimant currently works for Scott Company as a production worker full-time beginning in April 2004. Beginning November 7, 2004 through December 2004, the employer did not have full-time work available for the claimant as contemplated in the original contract of hire.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is partially unemployed.

Iowa Code section 96.19-38 provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

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.

An individual shall be deemed partially unemployed in any week in which the individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

Because the claimant is currently employed less than her regular full-time hours, she is considered partially unemployed. Benefits are allowed. Inasmuch as the employer is not offering the same wages and hours as contemplated in the contract of hire, it is liable for benefit charges to its account.

DECISION:

The December 27, 2004, reference 03, decision is reversed. The claimant is partially unemployed and benefits are allowed, provided she is otherwise eligible. The account of employer shall be liable for charges.

tkh/pjs