

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

SONJA M SAMMONS  
2100 HILLVIEW DR  
MARION IA 52302

CEDAR RAPIDS PIZZA CO LLC  
2125 WILEY BLVD SW  
CEDAR RAPIDS IA 52404-6398

Appeal Number: 05A-UI-06659-DT  
OC: 05/2/05 R: 03  
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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

Sonja M. Sammons (claimant) appealed a representative's June 17, 2005 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits in conjunction with her employment with Cedar Rapids Pizza Company, L.L.C. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 14, 2005. The claimant participated in the hearing. The employer failed to respond to the hearing notice and provide a telephone number at which a representative could be reached for the hearing and did not participate in the hearing. During the hearing, Claimant's Exhibit A was entered into evidence. 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.

#### FINDINGS OF FACT:

The claimant started working for the employer on April 1, 2004. The claimant initially worked part time (25 hours per week) at \$4.00 per hour plus tips as a waitress in the employer's restaurant. Beginning July 1, 2004, she became full time. In December 2004, she continued to work full time and was given a raise to \$5.00 per hour plus tips. She continued to work on this basis through March 17, 2005, working generally 8:00 a.m. to 4:00 p.m., Monday through Friday, and occasional Sunday mornings.

On March 18, 2005, the claimant had foot surgery due to a work-related injury. She was to be off work for several weeks and then return gradually. She first attempted to return to work on May 8, 2005. After she worked that day, her incision developed an infection and her doctor took her off work for another week. He gave her a release to return part time (25 hours per week) as of May 16, 2005, and to resume regular duties effective May 23, 2005. Early in May the claimant had inquired of the owner whether, at least while she was easing back into the schedule, she could work nights instead of days to avoid daycare expenses; when she gave the employer the release to resume full duties, she asked to be scheduled for any hours, days or nights.

The employer was only scheduling the claimant for a couple hours per week. Therefore, the claimant established an unemployment insurance benefit year effective May 22, 2005 seeking partial unemployment insurance benefits. Her weekly benefit amount was calculated to be \$119.00. For the week ending May 28, 2005, she was only scheduled and worked about two hours; for the week ending June 4, 2005, she was only scheduled and worked about five hours; for the week ending June 11, 2005, she was only scheduled and worked about 11 hours; for the week ending June 18, 2005, she was only scheduled and worked about five hours. She reported her wages including tips for these weeks.

The claimant was put on the schedule to work an evening shift on June 17, June 18, June 19, June 24, and June 30, as well as July 7, 2005. However, on each of these dates, shortly before the claimant was to report for work, the employer would call the claimant and instruct her not to come to work, as she was not needed. The last day the claimant physically worked was June 10, 2005. She contacted the owner on July 7, 2005 to ask about being scheduled and repeated her willingness to work anytime; the owner indicated he did not know what he would do, that he would talk to the manager. However, the claimant has still not been scheduled for any hours.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is eligible for partial unemployment insurance benefits. 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 in other employment. Iowa Code Section 96.19-38-b.

871 IAC 24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

Beginning on or about May 23, 2005, the claimant was ready and able for work but the employer was not providing the claimant with substantially the same employment as it provided during her base period. Consequently, the claimant is qualified to receive partial unemployment insurance benefits upon the filing of her claim effective May 22, 2005, provided she was otherwise eligible.

DECISION:

The unemployment insurance decision dated June 17, 2005 (reference 01) is reversed. The claimant is eligible for partial unemployment insurance benefits beginning May 22, 2005.

ld/kjw