

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PHAN L LA**  
Claimant

**APPEAL NO. 13A-UI-03237-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DAVIDSON HOTEL COMPANY LLC**  
Employer

**OC: 01/06/13**  
**Claimant: Respondent (2-R)**

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:**

The employer filed a timely appeal from the March 7, 2013, reference 01, decision that allowed benefits effective January 6, 2013 based on an agency conclusion that the claimant was partially unemployed. After due notice was issued, a hearing was held on May 6, 2013. Claimant Phan La participate. Jennifer Stansberry represented the employer. Chinese-English interpreter, Doris Ng assisted with the hearing. Exhibits 2 through 19 were received into evidence.

**ISSUES:**

Whether the claimant has been able to work and available for work since establishing her claim for benefits.

Whether the claimant was partially unemployed from her employment.

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: Phan La established a claim for unemployment insurance benefits that was effective January 6, 2013. Ms. La continued the claim for four weeks, but discontinued the claim after the week that ended February 2, 2013. At the time Ms. La established her claim, Workforce Development set her weekly benefit amount at \$293.00. For the week ending January 12, Ms. La reported \$270.00 in wages and received \$96.00 in benefits. For the week ending January 19, Ms. La reported \$180.00 in wages and received \$186.00 in benefits. For the week ending January 26, Ms. La reported \$135.00 in wages and received \$231.00 in benefits. For the week ending February 2, Ms. Law reported \$326.00 in wages and received no benefits.

Ms. La commenced her employment with employer Davidson Hotel Company, L.L.C., doing business as Sheraton, in 2008. Ms. La had previously worked at the same facility, but under

different ownership. Ms. La has traditionally worked between the hours of 8:00 a.m. and 4:30 p.m., 35 hours per week. Ms. La's hourly wage is \$11.25.

During the weeks in question, the employer continued to have the same work available to Ms. La as the employer had made available earlier in the employment. During the week that ended January 12, Ms. La had requested three days off. The employer had work available for Ms. La on those days. During the week that ended January 12, Ms. La worked 23.4 hours and used 8 hours of vacation. Thus, Ms. La's gross wages for the week were \$353.25, not the \$270.00 Ms. La reported to Workforce Development.

During the week that ended January 19, Ms. La had requested five days off. Ms. La worked 16.1 hours and had \$181.13 in gross wages for the week. This was slightly more than the \$180.00 in wages Ms. La reported.

During the week that ended January 26, Ms. La requested four days off. In addition, Ms. La called in sick one day and voluntarily left work early on another day. She worked 11.5 hours and had \$132.75 in gross wages for the week, slightly less than the \$135.00 she reported to Workforce Development.

During the week that ended February 2, Ms. La requested four days off. Ms. La worked 30.1 hours and had \$338.63 in gross wages. Slightly more than the \$326.00 Ms. La reported to Workforce Development.

#### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 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".

871 IAC 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).

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. 871 IAC 24.23(26). Contract for hire merely means the established conditions of the employment. See Wiese v. Iowa Dept. of Job Service, 389 N.W.2d 676, 679 (Iowa 1986).

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.

[Emphasis added.]

The weight of the evidence in the record indicates that Ms. La was not partially unemployed during any of the four weeks during which her claim for unemployment insurance benefits was active. For each week, the employer had the same work available as before, but Ms. La had unduly restricted her work availability. An employee cannot be deemed partially unemployed when she voluntarily reduces her work availability. For the same reason, the administrative law judge concludes that Ms. La did not meet the work availability requirement during the weeks when her claim was active. Ms. La was not eligible for benefits during the period of January 6,

2013 through February 2, 2013. The employer's account will not be charged for the benefits paid to Ms. Law for that period.

This matter will be remanded to the Claims Division for entry of an appropriate overpayment decision.

**DECISION:**

The Agency representative's March 7, 2013, reference 01, is reversed. The claimant was neither partially unemployed nor available for work within the meaning of the law during the period of January 6, 2013 through February 2, 2013. The claimant was not eligible for benefits for that period. The employer's account will not be charged for benefits paid to the claimant for that period.

This matter is remanded to the Claims Division for entry of an appropriate overpayment decision.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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