

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DARLA J KURTENBACH**  
Claimant

**KASTIM CORPORATION**  
Employer

**APPEAL 18A-UI-12228-NM-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/09/18**  
**Claimant: Appellant (1)**

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Iowa Code § 96.19(38)a & b – Total and Partial Unemployment  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment  
Iowa Code § 96.4(3) – Ability to and Availability for Work

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the December 21, 2018, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 10, 2019. Claimant participated and testified. Employer participated through General Manager Teresa Kasch.

**ISSUES:**

Is the claimant partially unemployed and available for work?

If so, is the employer's account liable for potential charges?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on April 27, 2018. Claimant is currently employed with the employer as a crew member. Claimant testified when she was hired, she explained to then-manager, Cody Mateesen, that she would need full time hours. He indicated he could guarantee her those hours. Kasch testified all crew members, including claimant, are considered part-time and this is explained in the employee handbook, which claimant received a copy of at the time of her hire. According to Kasch hours are determined based on business needs and are not guaranteed. Throughout claimant's employment she generally worked 35 or more hours per week, though her hours varied depending on need. During the week of Thanksgiving business was slow, so claimant was only scheduled 26 hours. Claimant has been scheduled her regular number of hours since that week.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not partially unemployed and this part-time employer is relieved of benefit charges.

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".

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 either of the following apply:

(1) 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.

(2) 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.

Claimant filed her claim for benefits for the week starting December 9, 2018. Even if claimant is a full-time employee, as she testified, the only week in which she has not worked her regular hours was the week of Thanksgiving, which precedes the filing of her original claim. Claimant did not identify any week from December 9, 2018 forward that she did not work her regular hours. As such, claimant is employed and therefore not eligible for benefits.

**DECISION:**

The December 21, 2018, (reference 01) unemployment insurance decision is affirmed. The claimant is still employed at the same hours and wages contemplated at the time of hire and not partially unemployed. Benefits are denied. The account of the employer is not chargeable.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs