

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KAYSHA L KENYON**  
Claimant

**APPEAL NO. 11A-UI-00926-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TIMMERMANS SUPPER CLUB**  
Employer

**OC: 11/28/10  
Claimant: Appellant (4)**

Section 96.4-3 – Able and Available  
871 IAC 23.43(4)a – Supplemental Employment  
871 IAC 24.23(23) – Full-Time Employment

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated January 14, 2011, reference 02, that held she is not eligible for benefits effective December 4, 2010, because she is still employed part-time as the same hours and wages. A telephone hearing was held on February 22, 2011. The claimant participated. Gary Neuses, owner, participated for the employer.

**ISSUES:**

Whether the claimant is able and available for work.

Whether claimant worked supplemental employment.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant worked a full-time job for Roger Klosterman & CO (er#320897) until she was laid off in May 2010. Claimant accepted a part-time job as a server in September working as many as 20 hours a week earning \$4.95 an hour plus tips.

Claimant filed an unemployment claim November 28, 2010 seeking partial benefits from her former full-time employer, as she continued working for the employer. Claimant's weekly benefit amount is \$164.00. The claimant has reported her employer earnings while claiming for partial benefits.

Recently, the claimant requested to be taken off the work schedule for February, because she has accepted a full-time job with Account Tax Solutions. She still considers herself to be an employee of the employer. The claimant has been reporting excessive earnings from her full-time job. The claimant has been earning full-time wages since January 30, 2011.

## 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 23.43(4)a provides in part:

(4) Supplemental employment.

a. An individual, who has been separated with cause attributable to the regular employer and who remains in the employ of the individual's part-time, base period employer, continues to be eligible for benefits as long as the individual is receiving the same employment from the part-time employer that the individual received during the base period. The part-time employer's account, including the reimbursable employer's account, may be relieved of benefit charges....

The administrative law judge concludes that the claimant's job for the employer is supplemental employment based on her layoff from Roger Klosterman & CO in May 2010 from the effective date of her claim to January 30, 2011.

The claimant is entitled to benefits from the effective date of her claim to January 30 in any week she earns less than her weekly benefit amount (\$164.00) plus \$15. The supplemental employer in this case is liable and charged for benefits paid.

871 IAC 24.23(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

The administrative law judge further concludes the claimant does not meet the availability requirements of the law effective January 30, 2011, as she is working a full-time job.

The claimant took herself off the employer work schedule for February 2011 for part-time work due to working a full-time job for Account Tax Solutions, which disqualifies her from receiving further benefits.

**DECISION:**

The department decision dated January 14, 2011, reference 02, is modified. The claimant is eligible for benefits due to working supplemental employment for the employer from November 28, 2010, through the week ending January 29, 2011. The claimant is disqualified effective January 30, 2011, because she is working full-time and does not meet the availability requirements of the law.

---

Randy L. Stephenson  
Administrative Law Judge

---

Decision Dated and Mailed

rls/kjw