

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINETTE MALDONADO

Claimant

APPEAL NO. 10A-UI-03112-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEBSTER CITY CUSTOM MEATS INC

Employer

OC: 01/17/10

Claimant: Respondent (1)

Section 96.4-3 – Able and Available

871 IAC 24.1(113)a Temporary Lay-off

Section 96.19-38-b –Eligibility for [Partial Unemployment](#) Insurance Benefits

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated February 16, 2010, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 12, 2010. Claimant participated. Employer participated by Connie Ingraham, Vice President Administration and Finance. The record consists of the testimony of Connie Ingraham; the testimony of Linette Maldonado; and Employer's Exhibit 1. Official notice is taken of agency records.

ISSUE:

Is the claimant employed by the employer for less than her usual hours and wages even though she remains able and available for work, and is she therefore eligible for partial unemployment insurance benefits?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a meat processing plant located in Webster City, Iowa. The claimant was hired on April 26, 2006. She is presently employed full time by the employer. She works in the put-up department, which primarily processes hams.

The plant has a seasonal peak during the holiday months of November and December in its ham processing. During the month of January, it is customary to schedule what the employer calls "dark Tuesdays", which means there is no production. Production workers are, however, given the opportunity to work hours in other departments to allow them to keep up hours and income. In January 2010 and February 2010, there were seven dark Tuesdays. A notice was posted on January 21, 2010, that all workers who were not earning enough should contact the employer for other jobs. (Exhibit 1) The claimant did do a cleaning job although she did know exactly when.

The claimant has worked the following hours since the filing of her claim on January 17, 2010:

January 17, 2010 – January 30, 2010	52.15 hours
January 31, 2010 – February 13, 2010	61.5 hours
February 14, 2010 – February 27, 2010	70.39 hours
February 28, 2010 – March 13, 2010	40.44 hours 3.14 hours overtime
March 14, 2010 – March 27, 2010	80 hours 2.99 hours overtime

During the period of February 28, 2010 through March 13, 2010, the claimant was excused from work for one week due to the illness of her daughter.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides that a claimant is deemed partially unemployed if she not employed at her usual hours and wages and earns less than her weekly benefit amount plus \$15.00 in other employment. Iowa Code § 96.19-38-b.

Beginning on or about January 17, 2010, there have been weeks in which 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 January 17, 2010, provided she was otherwise eligible.

In order to be otherwise eligible, the claimant must remain available for work on the same basis as when she was previously working full time and earning the wage credits on which her unemployment insurance benefits are based. Iowa Code § 96.4-3; 871 IAC 24.22(2)(a). She must also report all wages attributable to weeks in which she files weekly claims. The evidence established that the claimant was available for work and did report her wages. There was one week during the pay period of February 28, 2010 through March 13, 2010, when the claimant was not able and available for work as she was caring for her daughter. Benefits would not be payable for that week. Agency records do not indicate, however, that the claimant has received any benefits since the week of February 20, 2010.

DECISION:

The unemployment insurance decision dated February 16, 2010 (reference 01) is affirmed. The claimant is eligible for full or partial unemployment insurance benefits for weeks after January 17, 2010, in which her regular full-time hours are not made available to her even though she is available for work on the same full-time basis.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css