

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KATHY J CHRISTENSEN**  
Claimant

**APPEAL NO. 12A-UI-15212-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DONNA BANTA**  
Employer

**OC: 11/18/12  
Claimant: Respondent (5)**

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 December 19, 2012, reference 01, decision that allowed benefits based on a conclusion that the claimant was *partially* unemployed. After due notice was issued, a hearing was held on January 30, 2013. Claimant Kathy Christensen participated. Donna Banta, Office Manager, represented the employer. The administrative law judge took official notice of the agency's administrative record (DBRO) of wages reported by or for the claimant and benefits disbursed to the claimant.

**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 since she established her claim.

Whether the claimant was *temporarily* unemployed since she established her claim.

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: The employer is a long-haul trucking company and employs Kathy Christensen as a full-time oversized load escort vehicle driver. Ms. Christensen started the employment in March 2012 and continued in the employment at the time of the January 30, 2013 unemployment insurance appeal hearing. The employer pays Ms. Christensen \$125.00 per day for her services. During the months of October and November 2012, Ms. Christensen was on the road performing work

for the employer 49 days. The employer regularly has Ms. Christensen work six or seven days per week. Ms. Christensen welcomes the work, has consistently made herself available for the work, and has not declined any work the employer has for her since she established her claim for unemployment insurance benefits in November through the benefit week that ended January 12, 2013.

During the week that ended November 24, 2012, the employer did not have any work available for Ms. Christensen. That week included the Thanksgiving Holiday. The employer had asked Ms. Christensen whether she would be available to work that week and Ms. Christensen told the employer she would be. However, the employer did not have any loads for Ms. Christensen to escort that week and did not contact her to perform work that week. Ms. Christensen remained available for work that week. The following week, Ms. Christensen returned to her full-time work routine.

Ms. Christensen established a claim for unemployment insurance benefits that was effective November 18, 2012. That date was the start of the week during which the employer had no work for Ms. Christensen. Ms. Christensen had no wages for that week, which ended November 24, 2012. Ms. Christensen received \$290.00 in unemployment insurance benefits for that week. Thereafter, Ms. Christensen continued to call in a weekly claim but had wages that exceeded her \$290.00 weekly benefit amount by several hundred dollars and did not receive additional benefits. Ms. Christensen discontinued her claim for benefits after the week that ended January 12, 2013.

#### **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".

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).

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. Iowa Code Section 96.19(38)(c).

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 establishes that Ms. Christensen was able and available for work during the week that ended November 24, 2012. Ms. Christensen was *temporarily* unemployed that week because the employer had no work for her. Ms. Christensen's temporary unemployment for that week was prompted by the employer essentially shutting down operations for that week. Ms. Christensen is eligible for benefits for the week that ended November 24, 2012. The employer's account may be charged.

The weight of the evidence indicates that Ms. Christensen returned to full-time employment the week that ended December 1, 2012 and continued to receive full-time employment from the employer at least through the benefit week that ended January 12, 2013, after which Ms. Christensen discontinued her claim for unemployment insurance benefits. Due to the full-time employment, Ms. Christensen did not meet the unemployment insurance work availability requirement. See Iowa Administrative Code section 871 IAC 24.23(23). Nor was Ms. Christensen temporarily or partially unemployed during the period of November 25, 2012 through January 12, 2013. Ms. Christensen was not eligible for benefits during the period of November 25, 2012 through the week that ended January 12, 2013. The administrative law judge notes that Ms. Christensen did not receive benefits for those weeks.

**DECISION:**

The Agency representative's December 19, 2012, reference 01 is modified as follows. During the week that ended November 24, 2012, the claimant was able and available for work, temporarily unemployed, and eligible for benefits, provided she meets all other eligibility requirements. The employer's account may be charged for the benefits paid to the claimant for that week. During the remainder of the period when the claimant's claim was active, November 25, 2012 through January 12, 2013, the claimant did not meet the work availability requirement due to full-time employment, was not partially or temporarily unemployed and was not eligible for benefits.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs