

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TAMARA A LUSTER
Claimant

FEDEX GROUND PACKAGE SYSTEM INC
Employer

APPEAL 14A-UI-02032-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/26/14
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 21, 2014, (reference 01) unemployment insurance decision that denied benefits based upon not being partially unemployed. The parties were properly notified about the hearing. A telephone hearing was held on March 17, 2014. Claimant participated. Employer participated through Michael Olson.

ISSUES:

Is the claimant partially unemployed and available for work effective January 26, 2014?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is and has been employed part time (15 to 20 hours per week) as a package handler since June 10, 2010. She is currently paid \$12.73 per hour. She believed her hours were reduced after the holiday busy season. The employer operates this department five days per week until the work is completed, about three hours per day. During the peak holiday season from December 2 through 28, the employer operates six days per week. Claimant has no full-time wages in the base period from any employer. No benefits were paid for the weeks claimed.

Pertinent claim and wage history available at the time of hearing:

Week ending	Wages reported	Hours worked	Actual wages
February 1, 2014	\$137	18.37, ill one day	\$233.85
February 8, 2014	\$231	12.4, missed 2/5 shift, more than one hour tardy on 2/8	\$157.82
February 15, 2014	\$157	16.07, worked extra 2/11 shift but missed 2/12 shift	\$204.57
February 22, 2014	\$160	12.59, missed 2/21 shift	\$160.27
March 1, 2014	\$135	17.25	\$219.59
March 8, 2014	\$0	15.6	198.58

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not partially unemployed.

Iowa Code § 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.

Iowa Code § 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, 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.

An individual shall be deemed partially unemployed in any week in which 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.

Iowa Code § 96.7-2-a(2) provides:

2. Contribution rates based on benefit experience.

a. (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.

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.

An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

871 IAC 24.23(16) provides:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

Any limitation of hours was triggered by claimant's inability to work the available hours. Otherwise, the regular range of hours was available. Because she does not have full-time base period wages and the level of employment is consistent with the base period wage history with this employer, she may not be considered partially unemployed and the availability for work is moot.

DECISION:

The February 21, 2014, (reference 01) decision is affirmed. The claimant is not partially unemployed and benefits are denied.

NOTE TO CLAIMANT: If at any time in the future you become eligible for partial unemployment, you must *accurately* report gross wages during the week they are earned. Multiply the number of hours worked by the gross hourly wage as the chart above reflects. If you are uncertain or would like assistance, contact a Workforce Advisor.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

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