

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**VICKY DALE**  
Claimant

**APPEAL NO. 11A-UI-00853-PT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PROPERTY MANAGEMENT OF IOWA LLC**  
Employer

**OC: 11/14/10**  
**Claimant: Appellant (1R)**

Section 96.4-3 – Able and Available  
Section 96.19(38)a & b – Total and Partial Unemployment

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated January 18, 2011, reference 01, which held claimant was not partially unemployed. After due notice, a telephone conference hearing was scheduled for and held on February 24, 2011. Claimant was called at the number she provided for the hearing but did not answer. The employer participated by Robert Dubansky, owner.

**ISSUE:**

The issue in this matter is whether claimant is able and available for work and whether the claimant is still employed at the same hours and wages.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was employed part time for the employer. In December she received an increase in pay with this employer. She may have had full time employment from which she was laid off that caused her to file her claim effective November 14, 2010 but she did not participate in the hearing to establish such. On February 4, 2011 claimant resigned from this employment.

**REASONING AND CONCLUSIONS OF LAW:**

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".

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.

Claimant has not been working reduced hours or receiving reduced wages from this employer. She did not participate in the hearing or offer evidence to establish that she was laid off from other base period employment. The claimant has the burden of establishing her eligibility on the claim. Benefits are denied effective November 14, 2010.

**DECISION:**

The decision of the representative dated January 18, 2011, reference 01 is affirmed. Claimant is not eligible to receive unemployment insurance benefits, effective November 14, 2010. The issue of the claimant's separation from employment is remanded for determination.

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Ron Pohlman  
Administrative Law Judge

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Decision Dated and Mailed

rrp/pjs