

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LORI A LITTSSEN
Claimant

APPEAL NO. 09A-UI-09607-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SIOUX CITY COMMUNITY SCHOOL DIST
Employer

Original Claim: 05/24/09

Claimant: Appellant (4)

Section 96.19-38-b – Eligibility for Partial Unemployment Insurance Benefits
871 IAC 23.43(4)(a) – Charges for Partial Unemployment Insurance Benefits

STATEMENT OF THE CASE:

Lori A. Littsen (claimant) appealed a representative's June 26, 2009 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 21, 2009. The claimant participated in the hearing. Susan Fenceroy appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant employed by the employer for less than her usual hours and wages and eligible for full or partial unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer in July 2000. She works on-call as a substitute classroom instructional assistant. Her availability is only on Fridays starting after 8:15 a.m. The most recent time the claimant has worked was on October 17, 2008. In the fall semester 2008 she only worked two days. The \$132.00 she received for those two days are the only wages from the employer in her base period. While other work would be available for her on days other than Friday or earlier on Friday than 8:15 a.m. if the claimant was available to work those days, that had never been her pattern of employment with the employer.

The claimant had other full-time employment, Monday through Thursday, with another employer that ended in February 2009. Her primary base period wages are from that employer.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is eligible for partial unemployment insurance benefits and the employer's account is subject to charge. The unemployment insurance law provides that a claimant is deemed partially unemployed if she has been separated from her

regular job and earns less than her weekly benefit amount plus \$15.00 in other employment. Iowa Code section 96.19-38-b.

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 claimant was separated from her regular full-time employer and continued to work for her part-time base period employer on the same on-call substitute basis as she had previously worked. The employer was providing the claimant with substantially the same employment as it provided during her base period. Consequently, the claimant is qualified to receive unemployment insurance benefits, provided she was otherwise eligible, and pursuant to the rule, the employer is exempt from charge for benefits paid to the claimant as long as it continues to provide the claimant with the same part-time employment it provided during her base-period.

DECISION:

The unemployment insurance decision dated June 26, 2009 (reference 02) is modified in favor of the claimant. The claimant is eligible for unemployment insurance benefits, provided she is otherwise eligible, and the employer's account is exempt from charge for benefits paid to the claimant.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw