

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHARLENA J ANDERSON
Claimant

APPEAL NO. 08A-UI-02581-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES STAFFING SERVICES INC
Employer

OC: 01/27/08 R: 03
Claimant: Respondent (1)

Section 96.4-3 – Able to and Available for Work
Section 96.19-38-b – Eligibility for Partial Unemployment Insurance Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated March 5, 2008, reference 02, that concluded the claimant was eligible to receive partial unemployment insurance benefits and the employer's account was chargeable for benefits paid to the claimant since her hours and/or wages had been reduced. A telephone hearing was held on April 1, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Amy McGregor participated in the hearing on behalf of the employer. Official notice is taken of the Agency's records regarding the claimant's unemployment insurance claim, which show the claimant was paid wages of \$3,627.00 during the third quarter of 2007 by the employer. If a party objects to taking official notice of these facts, the objection must be submitted in writing no later than seven days after the date of this decision.

FINDINGS OF FACT:

The employer is a staffing service that provides workers to client businesses on a temporary or indefinite basis. The claimant worked on an assignment at CCB Packaging starting April 16, 2007. When the claimant took the assignment, she was informed that she would be working 40 hours per week. Her rate of pay was \$7.50 per hour.

The claimant's hours were reduced to 24 hours during the week ending February 2. As a result of the reduction in hours, the claimant filed a new claim for unemployment insurance benefits with an effective date of January 27, 2008. Her weekly benefit amount was determined to be \$157.00. Her base period on which her claim was based was from October 1, 2006, to September 30, 2007. The claimant was paid wages of \$3,627.00 during the third quarter of 2007 by the employer, which would be an average of 37 hours per week.

The claimant has had weeks since filing the claim for unemployment insurance benefits in which she worked less than her regular hours and had earnings less than her earnings allowance of \$172.00 (\$157.00 plus \$15.00). For example, CCB Packaging only had 16 hours of work for the claimant during the weeks ending February 16 and March 10 (\$120.00 in wages). In each of the weeks in which the claimant worked reduced hours, she contacted the employer for additional work, but there was no work available at the time.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was eligible for partial unemployment insurance benefits. The claimant filed a claim requesting partial unemployment insurance benefits for the weeks in which her earnings were less than the weekly benefit amount.

Iowa Code § 96.3-3 provides:

3. Partial unemployment. An individual who is partially unemployed in any week as defined in section 96.19, subsection 38, paragraph "b", and who meets the conditions of eligibility for benefits shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. The benefits shall be rounded to the lower multiple of one dollar.

Iowa Code § 96.19-38-b provides in part:

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.

The preponderance of the evidence establishes the claimant's regular workweek at the point she filed her new claim was 37 hours per week. She was working less than that regular workweek due to a reduction in hours effective January 27, 2008, and she was entitled to partial unemployment insurance benefits since her earnings were less than her weekly benefit amount plus \$15.00.

The unemployment insurance law provides that an individual be able to and available for work. Iowa Code § 96.4-3. The claimant was able to and available to work and did not restrict the number of hours she was willing to work.

The final issue is whether the employer's account is subject to charge for benefits paid to the claimant.

Iowa Code § 96.7-2-a(2) provides in part:

(2) The amount of regular 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.

The employer's account is subject to charge for benefits during the weeks of reduced hours because the employer did not provide the claimant with the same employment as provided during the base period.

DECISION:

The unemployment insurance decision dated March 5, 2008, reference 02, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible. The employer's account will be subject to charge for benefits paid to the claimant.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css