

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBORAH A LEPPERT

Claimant

APPEAL NO: 14A-UI-02948-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 02/23/14

Claimant: Appellant (2)

Section 96.4-3 – Able and Available
Section 96.19-38 – Partial Unemployment

STATEMENT OF THE CASE:

The claimant appealed a department decision dated March 13, 2014, reference 03, that held she was still employed part-time working same hours and wages, as of February 23, 2014, and benefits are denied. A hearing was held on March 31, 2014. The claimant participated. The employer elected not to participate. Employer Exhibit 1 was received as evidence. Official Notice was taken of claimant appeal documents.

ISSUES:

The issue is whether the claimant is able and available for work.

The issue is whether the claimant is partially unemployed.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record, finds: The claimant began working for her employer on December 10, 2011. She worked primarily as a part-time cashier until she suffered a job-related injury on November 20, 2013. She received worker's compensation for November and December 2013.

After returning to work, she became a rover for the employer. She experienced a weekly roller-coaster of work hours that varied and were less than what she had experienced before her injury. Claimant's weekly benefit amount is \$158. Her base period average weekly wage is \$280.12, and the employer is her primary base period employer. Claimant is still employed.

The employer representative faxed a document it would not appeal for the April 9 hearing. When claimant was so informed, she waived the hearing notice period and agreed to do the hearing on March 31.

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".

Iowa Code section 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.

The administrative law judge concludes claimant does meet the availability requirements of the law for partial unemployment benefits effective February 23, 2014.

It appears claimant's injury and job duty change has caused a periodic work-hour reduction. Claimant is still employed part time, but she is entitled to benefits when scheduled to work less than her regular hours.

DECISION:

The department decision dated March 13, 2014, reference 03, is reversed. The claimant is eligible for benefits effective February 23, 2014, as she is able and available for work.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs