

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHY L MASTAIN
Claimant

APPEAL NO: 10A-UI-00605-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**COMFORT KEEPERS
J & J ENTERPRISES**
Employer

OC: 08/23/09
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant appealed a department decision dated January 6, 2010, reference 01, that held she was not eligible for benefits effective December 6, 2009, as she was still employed at the same hours and wages. A telephone hearing was held on February 22, 2010. The claimant did not participate. The employer did not participate.

ISSUE:

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 considered the evidence in the record, finds: The claimant began working for her employer as a part-time caregiver on May 6, 2006. The claimant is still working the same part-time job for her employer as of December 6, 2009. The claimant was not guaranteed any set number of hours when hired by the employer.

The claimant did not respond to the hearing notice. The employer representative was not available when called for the hearing.

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 that the claimant is able and available for work, but not partially unemployed due to working the same part-time job as contemplated in her contract for hire.

Since the employer and claimant did not participate, the best evidence is the department fact-finding record. The claimant was not guaranteed any set number of hours at the time of hire, and she has not established that she is partially unemployed and eligible for benefits.

DECISION:

The department decision dated January 6, 2009, reference 01 is affirmed. The claimant is not eligible for benefits effective December 6, 2009, as she is not partially unemployed.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css