

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WENDY M LICKTEIG
Claimant

APPEAL NO. 14A-UI-02857-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

KASTIM CORPORATION
Employer

OC: 01/26/14
Claimant: Respondent (1)

Section 96.4-3 – Able and Available
871 IAC 24.23(26) – Same Hours and Wages
Section 96.19-38-b – Partial Unemployment Insurance Benefits
Section 96.7(2)A(2) – Charge to Employer’s Account

STATEMENT OF THE CASE:

The employer filed an appeal from a representative’s decision dated March 11, 2014, reference 02, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a hearing was held on April 7, 2014, by telephone conference call. The claimant participated personally. Employer participated by Danielle Shadle, General Manager. The record consists of the testimony of Wendy Lickteig; the testimony of Danielle Shadle; and Employer’s Exhibits 1-5. Official notice is taken of agency records.

ISSUE:

Whether the claimant is eligible for partial unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a McDonalds restaurant. The claimant was hired on September 9, 2013. She was a crew member. The employer does not guarantee any certain number of hours to an employee but the employer is usually able to provide employees with 40 hours per week.

The claimant suffers from a medical condition – peripheral neuropathy. As a result, she called off work for eighteen shifts between January 2014 and March 2014. She also went home sick on nine occasions. The employer then cut her hours to reflect the number of hours she actually worked.

The claimant established a claim for unemployment insurance benefits with an original claim date of January 26, 2014. This employer is not a base period employer and has not been charged for any unemployment insurance benefits that have been paid to the claimant.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides that a claimant is deemed partially unemployed if she is not employed at her usual hours and wages and earns less than her weekly benefit amount plus \$15.00 in other employment. Iowa Code § 96.19-38-b.

Beginning on or about January 26, 2014, there were weeks in which the employer was not providing the claimant with substantially the same employment as had been provided during her base period. Consequently, the claimant is qualified to receive partial unemployment insurance benefits upon the filing of her claim effective January 26, 2014, provided she was otherwise eligible. In order to be otherwise eligible, the claimant must remain available for work on the same basis as when she was previously working full time and earning the wage credits on which her unemployment insurance benefits are based. Iowa Code § 96.4-3; 871 IAC 24.22(2)(a). She must also report all wages attributable to weeks in which she files weekly claims.

This employer is not a base period employer and therefore benefits are not being charged to its account. If and when the employer does become a base period employer, a determination will be made on whether its account should be charged.

DECISION:

The decision of the representative dated March 11, 2014, reference 02, is affirmed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css