

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SUSAN M SELLARS**

Claimant

**APPEAL NO. 08A-UI-05675-LT**

**ADMINISTRATIVE LAW JUDGE  
AMENDED DECISION**

**CENTRAL IOWA HOSPITAL CORP**

Employer

**OC: 05/11/08 R: 02  
Claimant: Appellant (4)**

Iowa Code § 96.4(3) - Able and Available  
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the June 16, 2008, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on July 10, 2008. Claimant participated. Employer participated through Amy Williams. Claimant's Exhibit A was received. Employer's Exhibit 1 was received. Claimant substantially agreed with employer's exhibit.

**ISSUE:**

The issue is whether claimant is able to and available for work effective May 11, 2008.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant is employed as a full-time unit secretary paid at \$19.01 per hour and has a 28-year history of working full time. In March 2008 the Dual Diagnosis Adolescent Mental Health unit combined with the Child and Adolescent unit and had an accompanying budget cut, which restricted the number of staff. Claimant and her counterpart Pamela Miller both had their hours cut since they could not work at the same time. While Miller was able to work additional hours through the staffing office, claimant was not eligible to do so and is regularly working fewer than her history of full-time hours. Her weekly benefit amount (WBA) is \$347.00.

The administrative law judge finds that claimant was paid gross wages and benefits for the enumerated weeks as follows:

<b>Week End</b>	<b>Gross Wages (Vac)</b>	<b>Benefits Paid</b>	<b>Benefits Due</b>	<b>(Over)Underpayment</b>
May 17	\$143 (205)	\$256.00	\$85	(\$171)
May 24	\$655	\$203.00	\$0	(\$203)
May 31	\$611	\$347.00	\$0	(\$347)
June 7	\$765	\$0	\$0	\$0
June 14	\$86	\$0	\$347	\$347

The total overpayment (\$721) less the total underpayment \$347 leaves a net overpayment of (\$374.00).

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work.

Iowa Code § 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 § 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.

Since claimant was not working her regular full time hours due to a reduction in staff after combining the two units, she is considered partially unemployed. Accordingly, partial benefits are allowed as set out above.

**DECISION:**

The June 16, 2008, reference 01, decision is modified in favor of the appellant. The claimant is able to work and available for work effective May 11, 2008. Benefits are allowed, provided the claimant is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs