

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CASSANDRA WINNER
Claimant

APPEAL NO. 11A-UI-06380-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**BETTER HEALTH INC
VALLEY DRUG STORE**
Employer

OC: 04/03/11

Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

Better Health, Inc. / Valley Drug Store (employer) appealed a representative's May 5, 2011 decision (reference 01) that concluded Cassandra Winner (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 23, 2011. This appeal was consolidated for hearing with one related appeal, 11A-UI-06381-DT. The claimant participated in the hearing. Sarah Millsap, attorney at law, appeared on the employer's behalf and presented testimony from one witness, Linda Grimm. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant employed by the employer for less than her regular hours and wages and eligible for partial unemployment insurance benefits?

Was the claimant able and available for work?

FINDINGS OF FACT:

The claimant started working for the employer in December 2004. As of March 1, 2010, she accepted a position to work part time as a pharmacy support person. At that time, her regular schedule was to work every Saturday and to fill in as necessary. From January through June 2010, she averaged approximately 13 hours per week. In the first quarter 2010, the claimant was paid \$1,874.00, and in the second quarter 2010 the claimant was paid only \$954.00. As of June 30, 2010, her wage was \$8.76 per hour.

In approximately May 2010 two other employees' employment ended. The employer asked the claimant to fill in for those employees, and the claimant agreed. In the third quarter 2010, the employer paid the claimant \$2,947.00, averaging 26 hours per week.

Yet another employee went on maternity leave in early October. The employer requested the claimant fill in further for that employee, and the claimant agreed. In the fourth quarter 2010, the employer paid the claimant \$5,149.00, averaging 45 hours per week. In about February 2011, the employer advised the claimant that she would be dropped back down in hours as of about the first of April. In the first quarter 2011, the employer paid the claimant \$4,380.00, averaging 38.5 hours per week.

Since about the first of April, the claimant has again only been scheduled for Saturdays and occasional fill-ins. As a result, she established an unemployment insurance benefit year effective April 3, 2011. Her base period, as set by law, is the first quarter 2010 through the fourth quarter 2010. The highest quarter during that base period is the fourth quarter 2010, in which the employer paid the claimant \$5,149.00. The claimant has no other base period employment. As specified by law, the claimant's weekly benefit amount was determined from her base period high quarter wage credits to be \$223.00. The claimant began filing weekly claims and reporting her wages earned for those weeks, and receiving full or partial unemployment insurance benefits. As of the date of the hearing, the claimant had made the following weekly claims:

Week Ending	Wages Reported / Hours Worked
04/09/11	\$43.00 / 4.9
04/16/11	\$52.00 / 5.9
04/23/11	\$113.00 / 12.9
04/30/11	\$70.00 / 8.0
05/07/11	\$43.00 / 4.9
05/14/11	\$0.00 / 0
05/21/11	\$55.00 / 6.3
05/28/11	\$55.00 / 6.3
06/04/11	\$65.00 / 7.4
06/11/11	\$60.00 / 6.8
06/18/11	\$55.00 / 6.3

She worked no hours and earned no pay for the week ending May 14, 2011 because she had requested to be off work her usual Saturday, May 14, because she was doing a garage sale that day.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is eligible for partial unemployment insurance benefits for weeks in which she earned less than her weekly benefit amount plus \$15.00.

Iowa Code section 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 Section 96.19-38-b provides:

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.

The question becomes, what is the claimant's "then regular job" for purposes of her current unemployment insurance claim, to determine whether the claimant was working "less than the regular full-time week for that 'then regular job.'"

The employer relies upon Hart v. Iowa Department of Job Service, 394 N.W.2d 385 (Iowa 1986) in its argument that the claimant's "regular job" was the every Saturday plus occasional fill-in position that she began working around the first of April 2011. In that case, the claimant originally had worked a full time (38 hour) job, then went on maternity leave. When she was released from maternity leave, she declined to return to her prior full-time job, but requested a part-time job. As that employer had no part-time job available for her, it was agreed that the claimant would go on a six-month leave of absence. When she was ready to return to her full-time job after the leave of absence, the employer no longer had her full-time job available to her, but she was offered and accepted a part-time position working only eight to ten days per month. That claimant then sought unemployment insurance benefits as being "partially unemployed." The Court effectively agreed with the employer in that case that the claimant's "then regular job" was the part-time job that claimant had accepted, and therefore that the claimant was not eligible to receive unemployment insurance benefits for weeks she worked no hours under the analysis that she was "partially unemployed." Without deciding the matter, the Court did hold open the possibility that the claimant might be eligible to receive unemployment insurance benefits on another basis.

I do not find that the Court's decision in Hart is controlling in the case at hand. The facts are remarkably different: In Hart the claimant had initially been seeking to work less time than previously, and was coming off of a six-month period of no work when she was offered and accepted the part-time job; in contrast, in this case, the claimant had been asked to and had agreed to work substantially more hours, effectively working full-time, for more than six months before the employer on its own initiative determined it no longer needed the claimant to work the additional hours and that it would reduce her to the Saturday and occasional fill-in position. Without some intervening initiation on the part of the claimant to be returned to a part-time position, I conclude that as of the establishment of her claim effective April 3, 2011, the claimant's "then regular job" was the virtually full-time job she had been working particularly in the high quarter of her base period, the fourth quarter 2010.

If employers could unilaterally determine to reduce the hours of their employees and then successfully argue that the new hours were the "then regular job" of the employees, the provisions of Iowa Code § 96.19-38-b would become meaningless. Also instructive in this analysis is the observation that had the employer simply hired a temporary employee to cover the hours needed due to the loss of the two employees in May 2010 and the maternity leave of the third employee in October 2010, and had then ended that temporary employee's employment when those services were no longer needed as of the first of April 2011, that

temporary employee would still have been eligible to receive unemployment insurance benefits based upon their hours worked for the employer.

The preponderance of the evidence establishes the claimant's regular full-time workweek prior to the reduction of her hours was 40 or more hours per week. She was working less than that regular workweek due to a reduction in hours effective April 3, 2011, and her earnings were less than her earnings limit. The employer reduced her hours due to no longer needing coverage for positions that had been vacant. There is no automatic disqualification when an employer chooses to reduce an employee's hours no matter what the reason for the reduction is, even if it is for a good business reason. Benefits are allowed, if the claimant is otherwise eligible.

The unemployment insurance law provides that an individual be able to and available for work. Iowa Code section 96.4-3. The unemployment insurance rules provide that claimants are considered available for work if they are available for the major portion of the workweek. 871 IAC 24.22(2)h. On the other hand, claimants are unavailable for work if they fail to work the major portion of the scheduled workweek for their regular employer. 871 IAC 24.23(29). The only week in question for this issue is the week ending May 14.

Applying these principles, I conclude that the claimant was eligible for unemployment insurance benefits also for the week ending May 14 because while she failed to work on the Saturday for which she was then being scheduled, as her "then regular job" has been determined to be more than simply the Saturdays, it has not been established that she was unavailable for more than the Saturday or for the full-time workweek, nor would she have been over the earnings limit if she had worked that Saturday.

DECISION:

The unemployment insurance decision dated May 5, 2011 (reference 01) is affirmed. The claimant is eligible for partial unemployment insurance benefits, provided she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw