

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MINDE L ALBAUGH
Claimant

APPEAL NO. 13A-UI-00218-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OX YOKE INN INC
Employer

**OC: 11/25/12
Claimant: Respondent (1)**

Section 96.4-3 - Able to and Available for Work

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated December 31, 2012, reference 01, that concluded the claimant was working part time whenever work was available and was eligible for unemployment insurance benefits. A telephone hearing was held on February 8, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. No one participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant able to and available for work?

FINDINGS OF FACT:

The claimant has worked for the employer as a server since November 2006. There are two restaurant locations—one in Amana and one near Williamsburg. In the late fall and winter, the claimant's hours are reduced at the Amana restaurant due to the lack of business and more senior employees receive nearly all the hours. On the other hand, the Williamsburg restaurant has more hours available. The claimant has worked out an arrangement with the employer to work at the Williamsburg restaurant during the time when business is slow.

As a result, the claimant's hours and wages are reduced so that her wages are less than her weekly benefit amount. The claimant has not placed any restrictions on the number of hours she is willing to work.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was eligible for partial unemployment insurance benefits effective November 25, 2012. The claimant filed a claim requesting partial unemployment insurance benefits for the weeks in which her earnings were less than the weekly benefit amount.

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 in part:

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.

The preponderance of the evidence establishes the claimant was working less than her regular workweek due to a reduction in hours effective November 25, 2012, and she was entitled to partial unemployment insurance benefits since her earnings were less than her weekly benefit amount plus \$15.00.

The unemployment insurance law provides that an individual be able to and available for work. Iowa Code section 96.4-3. The claimant was able to and available to work and did not restrict the number of hours she was willing to work.

The final issue is whether the employer's account is subject to charge for benefits paid to the claimant.

Iowa Code section 96.7-2-a(2) provides in part:

(2) The amount of regular benefits . . . paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer.

The employer's account is subject to charge for benefits because the employer did not provide the claimant with the same employment as provided during the base period.

DECISION:

The unemployment insurance decision dated December 31, 2012, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

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