

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KATHY M KNAPP**  
Claimant

**APPEAL NO. 09A-UI-15995-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JUHAK CO**  
Employer

**Original Claim: 08/16/09  
Claimant: Respondent (2-R)**

Section 96.19.38(b) – Partial Unemployment

**STATEMENT OF THE CASE:**

The employer, Juhak Company, filed an appeal from a decision dated October 20, 2009, reference 01. The decision allowed benefits to the claimant, Kathy Knapp. After due notice was issued, a hearing was held by telephone conference call on November 30, 2009. The claimant did not provide a telephone number where she could be contacted and did not participate. The employer participated by Director Okja Jeun.

**ISSUE:**

The issue is whether the claimant is still employed part-time.

**FINDINGS OF FACT:**

Kathy Knapp began employment with Juhak on August 24, 2009 as a full-time preschool teacher. She remains in that capacity as of the date of the hearing. She did take some time off for personal business and illness during her employment, all of which was approved by the employer, but her status as a full-time employee has not changed and she is scheduled 40 hours per week.

Kathy Knapp has received unemployment benefits since filing an additional claim with an effective date of September 27, 2009.

**REASONING AND CONCLUSIONS OF LAW:**

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 claimant is not partially unemployed under the provisions of the above Code section. She was hired to work full-time and is regularly scheduled 40 hours per week. When she did not work the full 40 hours in a given week, it was because she was off due to illness or personal business, but this does not change her status. The claimant is ineligible for benefits.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

**DECISION:**

The representative's decision of October 20, 2009, reference 01, is reversed. Kathy Knapp is ineligible for unemployment benefits, as she is not partially unemployed. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/kjw