

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MEGAN L WATSON
Claimant

APPEAL 21A-UI-01180-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PJ FOOD SERVICE INC
Employer

OC: 08/23/20
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

The claimant/appellant, Megan L. Watson, filed an appeal from the December 7, 2020 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on February 16, 2021. The claimant participated. The employer did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing.

The administrative law judge took official notice of the administrative records. Claimant Exhibits A and B were admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant totally, partially, or temporarily unemployed?
Is the claimant able to and available for work?
Is the claimant still employed at the same hours and wages?
Is the employer’s account subject to charge?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant established her claim for benefits with an effective date of August 23, 2020. She has a weekly benefit amount of \$423.00.

Claimant began employment September 24, 2015 and was permanently laid off from work on September 24, 2020. Claimant earned \$15.96 per hour as a full-time production worker. Claimant made weekly continued claims for the period of August 23, 2020 through December

19, 2020. Initially, claimant filed her claim for benefits due to a reduction in hours. Claimant worked all available hours. Claimant was then permanently laid off on September 24, 2020.

From the period of September 24, 2020 through December 19, 2020, claimant was able to and available for work, conducted her weekly work searches and did not refuse any offers of work.

REASONING AND CONCLUSIONS OF LAW:

The first issue before the administrative law judge is whether the employer's agreement not to contest a claim for unemployment insurance benefits insures that the claimant will receive unemployment benefits. It does not. The decision about whether a claimant receives or is denied unemployment insurance benefits is not up to the employer or the claimant, but is determined by Iowa Workforce Development applying the facts of the claimant's job separation to the Unemployment Security Law as enacted by the state legislature. Whereupon the employer might agree not to contest a claim, that promise, in and of itself, does not guarantee that a claimant will receive unemployment insurance benefits, but only that the employer will not hinder any efforts on the part of the claimant to make a claim for unemployment benefits.

For the reasons that follow, the administrative law judge concludes the claimant is eligible for benefits.

Iowa Code § 96.19(38)b provides:

As used in this chapter, unless the context clearly requires otherwise:

38. "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 either of the following apply:

(1) 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.

(2) 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.

Iowa Code section 96.7(2)a(2)(a), (b), and (c) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended 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.

(a) 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. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

For an individual to be eligible to receive benefits, she must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code § 96.4(3). The burden is on the claimant to establish that she is able and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22.

Iowa Admin. Code r. 871-24.18 provides:

Wage-earnings limitation. An individual who is partially unemployed may earn weekly a sum equal to the individual's weekly benefit amount plus \$15 before being disqualified for excessive earnings. If such individual earns less than the individual's weekly benefit amount plus \$15, the formula for wage deductions shall be a sum equal to the individual's weekly benefit amount less that part of wages, payable to the individual with respect to that week and rounded to the lower multiple of one dollar, in excess of one-fourth of the individual's weekly benefit amount.

This rule is intended to implement Iowa Code § 96.3, 96.4 and 96.19(38).

For the period of August 23, 2020 until September 24, 2020:

Because the claimant was not currently employed under the same hours and wages as contemplated at hire, she is considered partially unemployed. Benefits may be allowed based upon reporting of weekly earnings. For any week that claimant earned more than her weekly benefit amount plus \$15.00, ($\$423 + \$15 = \438) she is not eligible for partial benefits. See Iowa Admin. Code r. 871-24.18

Effective September 25, 2020, claimant was totally unemployed due to being laid off. Claimant presented she was otherwise able and available for work. Therefore, benefits are allowed, provided she is otherwise eligible.

For whatever period the employer is not offering the same wages and hours as contemplated in the contract or terms of hire, it may be liable for benefit charges to its account.

DECISION:

The unemployment insurance decision dated December 7, 2020, (reference 01) is reversed. Effective August 23, 2020, claimant was not employed at the same hours and wages as contemplated at hire. Claimant was able and available for work. Benefits are allowed, provided she is otherwise eligible.



Jennifer L. Beckman
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February 26, 2021
Decision Dated and Mailed

jlb/mh