

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

REVILLEANN R TALLON

Claimant

THE GREEN THUMBERS INC

Employer

APPEAL NO. 11A-UI-05716-PT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/20/11
Claimant: Appellant (2)**

Section 96.4-3 – Able and Available
Section 96.7-2(a)-2 – Base Period Employer

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated April 18, 2011, reference 01, which held claimant not partially unemployed. After due notice, a telephone conference hearing was scheduled for and held on May 23, 2011. Claimant participated personally. Employer did not respond to the notice of hearing and did not participate.

ISSUE:

The issue in this matter is whether claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was employed full time Earnest Machine Products. She was laid off from this employment in 2009 and filed a claim for benefits. Claimant was hired to work for Green Thumber's Inc. as a part-time employee in August 2010 and remains employed on same basis. She filed a new claim effective February 20, 2011. She attends school full time on Department Approved Training and is approved for Training Extension Benefits.

REASONING AND CONCLUSIONS OF LAW:

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.

Iowa Code § 96.7-2-a(2) 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.

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.

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.

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.

The claimant is employed to the same extent (part-time) she was during the base period of her claim with the employer. She is on DAT and TEB. She in no way limits her availability to work for this employer. The claimant is partially unemployed, able and available for work. Benefits are allowed effective February 20, 2011 provided she is otherwise eligible. Such benefits shall not be charged to this employer's account pursuant to Iowa Code § 96.7-2-a(2).

DECISION:

The decision of the representative dated April 18, 2011, reference 01, is reversed. Benefits are allowed effective February 20, 2011, provided she is otherwise eligible. Such benefits shall not be charged to this employer's account pursuant to Iowa Code § 96.7-2-a(2).

Ron Pohlman
Administrative Law Judge

Decision Dated and Mailed

rrp/pjs