

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AMANDA OAKLAND

Claimant

THE UNIVERSITY OF IOWA

Employer

APPEAL 22A-UI-00414-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/05/20

Claimant: Appellant (4)

Iowa Code section 96.1A(37) – Definitions – Total, partial unemployment
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search
Iowa Code § 96.7(2)A(2) – Charges – Same base period employment
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
PL 116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

The claimant, Amanda Oakland, filed an appeal from the February 16, 2021, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on January 25, 2022, at 10:00 a.m. The claimant participated. The employer participated through Scott Coons. Exhibits D-1, D-2 and D-3 were received into the record. Official notice was taken of the administrative record.

ISSUES:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant began employment with the employer, the University of Iowa on August 11, 2008. The claimant is a full-time revenue cycle manager, working 40 hours per week. The claimant's hourly wage is \$38.09.

The claimant filed an initial claim for unemployment insurance benefits effective July 5, 2020. The claimant's weekly benefit amount is \$559.00.

The administrative record DBRO shows the claimant filed weekly claims for the weeks ending July 11, 2020, July 18, 2020, and July 25, 2020. The claimant reported earning \$0.00 for the weeks ending July 11, 2020 and July 25, 2020. Both parties explained that the University of Iowa mandated that employees take two weeks of furlough due to budgetary pressures on it

due to Covid19. The weeks ending July 11, 2020 and July 25, 2020 were the two weeks the claimant selected to take the furlough.

The claimant explained she filed a weekly claim for the week ending July 18, 2020 because Iowa Workforce Development staff suggested she do so. The administrative record DBRO shows the claimant reported earnings exceeding her weekly benefit amount for the week ending July 18, 2020.

The claimant did not work for any other employers during this period or during her base period.

The following section describes the findings of facts necessary to resolve the timeliness issue:

A disqualification decision was mailed to the claimant's address of record on February 16, 2021. The claimant received the decision around that time but read it to deny benefits for the week ending July 18, 2020. The claimant did not disagree that she was ineligible for this week. (Exhibit D-1) The claimant received another decision dated February 16, 2021, which stated she was eligible for unemployment insurance benefits effective July 5, 2020. (Exhibit D-3)

Given this discrepancy between the two decisions dated February 16, 2021, the claimant assumed that she was found eligible for the weeks she sought benefits. The claimant realized her assumption was not correct when she received overpayment decisions dated November 22, 2021. These overpayment decisions warned the final date for filing appeal was December 2, 2021. The claimant filed her appeal on December 2, 2021, through Iowa Workforce Development's Online Appeal portal. (Exhibit D-2)

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the claimant's appeal is timely. The administrative law judge determines it is.

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of issuing the notice of the filing of the claim to protest payment of benefits to the claimant. All interested parties shall select a format as specified by the department to receive such notifications. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was issued, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the

representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant did not have a reasonable opportunity to appeal because she received contradictory decisions on the same date. The claimant reasonably concluded the disqualification decision here only disqualified her for the week ending July 18, 2020. The claimant's reasonable conclusion was disproven upon receipt of the overpayment decisions. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant timely appealed the overpayment decision, which was the first notice of her conclusion regarding these contradictory decisions was erroneous. Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes the claimant was employed for the week ending July 18, 2020. He further concludes the claimant was temporarily unemployed and able and available for work for the weeks ending July 11, 2020 and July 25, 2020.

Iowa Code section 96.1A(37) 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 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 96.4(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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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 Admin. R. 871-24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) Where a claimant is still employed in **a part-time job** at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis difference from the contract for hire, such claimant cannot be considered partially unemployed. [Emphasis added]

Iowa Code section 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.

(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.

Whether the claimant was totally, temporarily or partially unemployed?

The claimant did not earn any insured wages during the weeks of July 11, 2020 and July 25, 2020. The claimant was temporarily unemployed for these weeks. The claimant earned wages exceeding her weekly benefit amount for the week ending July 18, 2020. The claimant was unemployed for that week.

Whether the claimant was able and available?

But for the employer's order to furlough, the claimant would have been working the weeks ending July 11, 2020 and July 25, 2020. The claimant was able and available for those weeks.

Whether claimant is still employed at the same hours and wages?

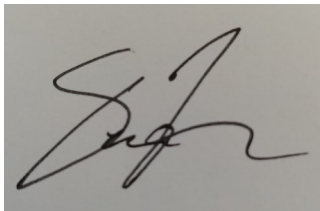
The claimant was a full-time employee. As a result, this administrative rule is entirely inapplicable to her claim.

Whether the employer is subject to charge?

The claimant's base period consists entirely of insured wages from the employer. The employer is subject to charge.

DECISION:

The February 16, 2021, (reference 02) unemployment insurance decision is modified in favor of the appellant. To the extent this decision has been interpreted to deny the claimant benefits for the week ending July 25, 2020, it has been modified in her favor. Benefits are allowed for that week and the week ending July 11, 2020. The claimant is ineligible for benefits the week ending July 18, 2020.



Sean M. Nelson
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February 16, 2022
Decision Dated and Mailed

smn/scn