

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LATOYA ASH
Claimant

APPEAL NO. 20A-UI-09861-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PARCO LTD
Employer

OC: 10/20/19
Claimant: Respondent (2R)

Iowa Admin. Code r. 871-24.23(26) – Part-Time Worker – Same Wages and Hours
Iowa Code § 96.4-3 – Able and Available
Iowa Code § 96.7(2)A(2) – Partial Benefits
Iowa Code § 96.19(38) – Total and Partial Unemployment
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Federal Law PL 116-136 Sec. 2104 – Eligibility for Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated August 6, 2020, reference 05, which held claimant able and available for work. After due notice, a hearing was scheduled for and held on October 1, 2020. Claimant participated personally. Employer participated by Juliet Diaz. Employer's Exhibits 1-2 were admitted into evidence.

ISSUES:

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

Whether claimant is eligible to receive partial benefits?

Whether claimant is able and available for work?

Whether claimant has been overpaid state unemployment benefits?

Whether claimant is eligible to receive Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

The claimant worked for employer from August 6, 2019 through April 27, 2020 as a part time crew member working, on average, 15-20 hours per week. Throughout the last months of her employment, claimant had a history of not showing up for shifts. Claimant lost a few hours on her shifts as she did not steadily show and was given 13-15 hours during the Covid period. Employer remained open at all times and employees' hours were not reduced due to Covid.

Claimant has received state unemployment benefits in this matter of \$4,823.00.

Claimant has received Federal Pandemic Unemployment Compensation benefits in this matter of \$9,600.00.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not partially unemployed.

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 96.19, 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 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 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 Admin. Code 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 different from the contract for hire, such claimant cannot be considered partially unemployed.

At all times while claimant was employed by employer she was offered comparable times to work. Claimant was not able and available to work all of the hours offered and often missed shifts. This cannot be attributed to employer who had hours available at all times relevant. Benefits are denied. Inasmuch as the current part-time employer is offering the same wages and hours as in the base period, no benefit charges shall be made to its account.

Claimant has received state unemployment benefits of \$4,823.00. Said amount is an overpayment.

Claimant has received Federal Pandemic Unemployment Compensation benefits of \$9,600.00. Claimant is not eligible to receive this payment.

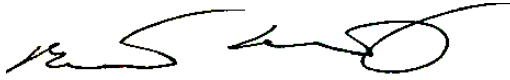
Note to Claimant: Even though claimant is not eligible for regular unemployment insurance benefits under state law, she may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed. **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.

This matter will be remanded to the fact finder for a determination on the separation issue.

DECISION:

The August 6, 2020, reference 05, decision is reversed. The claimant is not partially unemployed and benefits are denied. Claimant has received state unemployment benefits of \$4,823.00. Said amount is an overpayment. Claimant has received Federal Pandemic Unemployment Compensation benefits of \$9,600.00. Claimant is not eligible to receive this payment.

This matter will be remanded to the fact finder for a determination of the separation issue between the parties.



Blair A. Bennett
Administrative Law Judge

October 2, 2020
Decision Dated and Mailed

bab/scn