

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KAREN S ROSE
Claimant

WESLEYLIFE
Employer

APPEAL 17A-UI-12987-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/05/17
Claimant: Respondent (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2)a – Availability for Work – Shift Restriction
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

The employer filed an appeal from the December 7, 2017, (reference 01) unemployment insurance decision that allowed benefits based upon claimant's availability for work. The parties were properly notified about the hearing. A telephone hearing was held on January 11, 2018. Claimant participated. Employer participated through director of nursing Sarah Treybal and was represented by Amelia Gallager. Employer's Exhibit 1 was received.

ISSUES:

Is the claimant able to work and available for work effective November 5, 2017?
Is the claimant eligible to receive partial benefits?
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 began working for employer in 2008. Claimant works as a full-time CNA.

In approximately 2015, claimant bid on and was granted the opportunity to work the "weekend package" schedule. Claimant worked 16 hours on Saturday, 16 hours on Sunday, and eight hours on Wednesday. Claimant worked a total of 40 hours per week. Claimant has worked this schedule since 2015. Since 2015, claimant has also watched her grandchildren during the day on weekdays and is not available to work during that time.

In October 2017, employer adopted a policy requiring all CNAs to work every other weekend. As a result, employer reduced claimant's hours every other weekend to eight hours per shift so there would be hours available for other CNAs to work.

From November 1, 2017, going forward, claimant is scheduled to work 24 hours every other week and 40 hours on the alternating weeks.

Every week at the beginning of the week, director of nursing Sarah Treybal sends a text message alerting employees of other shifts that are open throughout the week. The shifts are not guaranteed and are only offered when available. Claimant has not picked up any of these shifts as she has little ability to do so given her childcare responsibilities and long commute time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is partially unemployed and this employer is not relieved of benefit charges.

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. 871-24.22(2)(a) provides:

24.22 Benefit eligibility conditions.

(2)(a) Shift restriction. The individual does not have to be available for a particular shift. If an individual is available for work on the same basis on which the individual's wage credits were earned and if after considering the restrictions as to hours of work, etc., imposed by the individual there exists a reasonable expectation of securing employment, then the individual meets the requirement of being available for work.

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.

Because the claimant does not have other base period wages and the level of employment is not consistent with the base period wage history with this employer, and she remains available to work in the same capacity in which the wage credits were earned, she may be considered partially unemployed and this employer may be liable for benefit charges.

For any week of benefits claimed, claimant must report gross wages earned that week to establish whether or not she is eligible for partial unemployment benefits.

DECISION:

The December 7, 2017, (reference 01) unemployment insurance decision is affirmed. The claimant is partially unemployed and benefits are allowed, provided she is otherwise eligible. The account of the current employer (account number 516092) shall be charged. Claimant should report gross wages for the week in which they are earned for the purpose of establishing continuing eligibility for partial unemployment benefits.

Christine A. Louis
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Decision Dated and Mailed

cal/scn