

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MACY L PIEHL**  
Claimant

**WESTERN HOME SERVICES INC**  
EMPLOYER

**APPEAL 21A-UI-03823-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/19/20**  
**Claimant: Respondent (1)**

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Iowa Code § 96.4(3) – Able to and Available for Work  
Iowa Code § 96.19(38)B – Total, Partial, Temporary Unemployment  
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Same Wages

**STATEMENT OF THE CASE:**

The employer/appellant filed an appeal from the January 15, 2021 (reference 01) unemployment insurance decision that found the claimant was still working on-call or part time and was eligible for unemployment insurance benefits. The decision further found that because the claimant was not performing services in the same pattern of her employment as in her base period employment that the employer would not be relieved of charges. After due notice was issued, a telephone hearing was held on March 31, 2021. The claimant did not participate. The employer participated through witness Jordan Elsamiller and was represented by Karel Clark. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

**ISSUES:**

Is the claimant eligible for total or partial unemployment benefits?  
Is the claimant able to and available for work?  
Is the employer's account subject to charges?

**FINDINGS OF FACT:**

Having heard the testimony and having examined the evidence in the record, the administrative law judge finds: Claimant began working for this employer as a full-time cook on February 17, 2020. She worked at the employer's restaurant. When the COVID-19 pandemic occurred, the restaurant reduced its hours and in order to avoid a layoff, the claimant was transferred to a senior living facility that the employer operated. The claimant was only offered part-time employment as a cook at the senior living facility. On or about June 21, 2020, the claimant was transferred back to the restaurant as a full-time employee.

Claimant's administrative records establish that she filed weekly-continued claims for four weeks between April 26, 2020 and May 23, 2020. Claimant's weekly-benefit amount that was established when she filed her original claim effective April 19, 2020 was \$117.00. Claimant reported earned wages above her weekly benefit amount, plus \$15.00, for each weekly-

continued claim and therefore no regular unemployment insurance benefits were paid to the claimant. No further claims were filed after the week-ending May 23, 2020.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes as follows:

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", subparagraph (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".

(emphasis added).

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 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

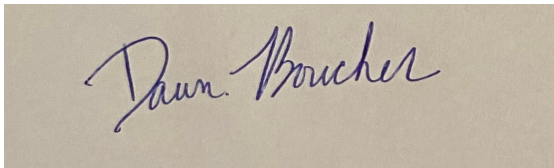
for excessive earnings. If such individual earns less than the individual's weekly benefit amount plus \$15, the formula for wage deductions shall be a sum equal to the individual's weekly benefit amount less that part of wages, payable to the individual with respect to that week and rounded to the lower 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).

In this case, the claimant's hours were reduced when the employer's restaurant limited its hours due to the COVID-19 pandemic. Claimant went from full-time status to part-time status. As such, there is no disqualification imposed to the claimant due to the change in her status of employment. However, unemployment insurance benefits were not paid to the claimant due to the fact that she exceeds the wage earnings limitation pursuant to Iowa Admin. Code r. 871-24.18. The employer's account may have been charged if benefits were paid.

**DECISION:**

The January 15, 2021 (reference 01) decision is affirmed. Claimant was still employed in a part-time basis whenever work was available. Because she was not performing services in the same pattern of employment as in her base period, the employer's account is not relieved of charges.

A rectangular area containing a handwritten signature in blue ink that reads "Dawn Boucher".

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Dawn Boucher  
Administrative Law Judge

April 5, 2021  
Decision Dated and Mailed

db/kmj