

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MEGAN E GABEL**  
Claimant

**AREA RESIDENTIAL CARE INC**  
Employer

**APPEAL 20A-UI-08130-AW-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/29/20  
Claimant: Appellant (4)**

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Iowa Code § 96.19(38) – 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

**STATEMENT OF THE CASE:**

Claimant filed an appeal from the July 1, 2020 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on August 24, 2020, at 9:00 a.m. Claimant participated. Employer did not participate. No exhibits were admitted. 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: Claimant began her part-time employment with Area Residential Care on November 17, 2015. Claimant works an average of eight hours per week and earns \$14.00 per hour. Claimant's employment with Area Residential Care is supplemental to her full-time employment with Platinum Services. Claimant filed an initial claim for benefits effective March 29, 2020 after being laid off by Platinum Services as a result of Covid-19. Since filing her initial claim, claimant has continued to work her regular hours and earn her regular wage from Area Residential Care, except for the week ending July 18, 2020 when claimant was on vacation and did not work. Claimant's weekly benefit amount is \$126.00.

**REASONING AND CONCLUSIONS OF LAW:**

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

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 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 Admin. Code r. 871-23.43(4)a provides in part:

(4) Supplemental employment.

a. An individual, who has been separated with cause attributable to the regular employer and who remains in the employ of the individual's part-time, base period employer, continues to be eligible for benefits as long as the individual is receiving the same employment from the part-time employer that the individual received during the base period. The part-time employer's account, including the reimbursable employer's account, may be relieved of benefit charges....

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.

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.

Area Residential Care is claimant's supplemental part-time employer; claimant has primary full-time employment from which she was laid off due to Covid-19. Since filing her initial claim effective March 29, 2020, claimant has received the same employment from employer that she received during her base period, except for the week ending July 18, 2020 when claimant did not work because she was on vacation. Claimant is not eligible for benefits the week ending July 18, 2020, because she was not available for work. For every other week since March 29, 2020, claimant is eligible for benefits subject to her reporting wages earned and provided she is otherwise eligible for benefits. Inasmuch as employer is offering the same wage and hours as contemplated at hire, its account may be relieved of charges.

**DECISION:**

The July 1, 2020 (reference 01) unemployment insurance decision is modified in favor of appellant. Claimant is receiving the same employment with this supplemental part-time employer that she received during the base period, except for the week ending July 18, 2020 when claimant was not available for work. Benefits are denied for the week ending July 18, 2020. Benefits are allowed for every other benefit week since March 29, 2020, subject to claimant reporting all wages earned and provided claimant is otherwise eligible. Employer's account (# 068640-000) may be relieved of charges.



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August 26, 2020  
Decision Dated and Mailed

acw/mh