

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NICHOLE M RIDER
Claimant

ABCM CORPORATION
Employer

APPEAL 17A-UI-06341-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/21/17
Claimant: Respondent (2)

Iowa Code § 96.4(3) – Ability to and Availability for Work
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:

ABCM Corporation (employer) filed an appeal from the June 13, 2017, reference 01, unemployment insurance decision that allowed benefits based upon the determination Nichole M. Rider (claimant) is able to and available for work as she was still employed part-time or working on-call whenever work was available. The parties were properly notified about the hearing. A telephone hearing was scheduled for July 7, 2017. At the start of the phone call, the claimant stated she was at work and had sent in a written request to postpone the hearing. The Appeals Bureau did not receive the written request. However, the employer did not object to postponing the hearing. The parties waived notice and the hearing was rescheduled for July 12, 2017. On the morning of the hearing, the claimant did not answer the phone at the number provided and did not participate. The employer participated through Human Resources Coordinator Kristina Junker. No exhibits were offered or received.

ISSUES:

Is the claimant partially unemployed and available for work effective May 21, 2017?
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: The claimant was employed full-time as a Certified Nurse Aid beginning on January 19, 2017 and her last day worked was June 7, 2017. The claimant's hours varied, but the employer's full-time employees do not work less than 32 hours a week. The claimant worked over 32 hours each week throughout her employment.

The claimant opened her unemployment insurance claim the week of May 21, 2017. On June 1, 2017, the claimant gave notice to the employer that she wanted to go to an as needed position (PRN) and her last day as a full-time employee would be June 7, 2017. As a PRN employee, the claimant would be responsible for checking hours that were available each month and signing up for any shifts she desired. She was no longer guaranteed or scheduled for any

hours by the employer. The claimant made her request because she had found another job.¹ The claimant has been working her other job. She has not returned to work any shifts for the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not partially unemployed. Benefits are denied until such time as the claimant presents new information to Iowa Workforce Development (IWD) that she is totally or partially unemployed, provided she is otherwise eligible.

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", 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. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Code § 96.19(38) provides:

"Total and partial unemployment".

¹ The claimant's separation was addressed in an Unemployment Insurance Decision issued July 11, 2017, reference 03, which denied benefits. As of the date of the hearing, no appeal had been filed to that decision.

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 § 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.

Iowa Admin. Code r. 871-24.22(2)f provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

f. Part-time worker, student--other. Part-time worker shall mean any individual who has been in the employ of an employing unit and has established a pattern of part-time regular employment which is subject to the employment security tax, and has accrued wage credits while working in a part-time job. If such part-time worker becomes separated from this employment for no disqualifiable reason, and providing such worker has reasonable expectation of securing other employment for the same number of hours worked, no disqualification shall be imposed under Iowa Code section 96.4(3). In other words, if an individual is available to the same degree and to the same extent as when the wage credits were accrued, the individual meets the eligibility requirements of the law.

Iowa Admin. Code r. 871-24.23(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

The claimant worked in her agreed upon full-time position from her date of hire through June 7, 2017. At that time, the claimant began another job. She did not participate to refute the employer's testimony. The claimant has not established that she was partially or totally unemployed at any point since filing her claim for benefits the week of May 21, 2017. She has not established that she worked less than her agreed upon hours during her employment with this employer or her subsequent employer. Benefits are denied until such time as the claimant presents new information to IWD that she is partially or totally unemployed, provided she is otherwise eligible.

As the claimant is not partially or totally unemployed, the issue of ability to and availability for work is moot. The issue of whether the employer's account is subject to charge under Iowa Code § 96.7(2)a(2) is moot as the employer is not part of the claimant's current base period and would not be subject to charge for any benefits claimed during the claimant's current base period.

DECISION:

The June 13, 2017, reference 01, unemployment insurance decision is reversed. The claimant is not partially or totally unemployed. Benefits are denied until such time as she presents new information to IWD that she is partially or totally unemployed, provided she is otherwise eligible.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn