

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**VALERIE L BURGESS**  
Claimant

**APPEAL 17A-UI-07114-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SEVENTH AVENUE INC**  
Employer

**OC: 07/17/16  
Claimant: Respondent (1)**

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Iowa Code § 96.4(3) – Able and Available  
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Part time, same hours and wages  
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment  
Iowa Code § 96.7(2)a – Same Base Period Employment

**STATEMENT OF THE CASE:**

The employer/appellant filed an appeal from the July 12, 2017 (reference 08) unemployment insurance decision that found claimant was eligible for unemployment benefits beginning June 18, 2017 because she was still employed but not performing services in the same pattern of employment as in the base period. The parties were properly notified of the hearing. A telephone hearing was held on August 1, 2017. The claimant, Valerie L. Burgess, did not participate. The employer, Seventh Avenue Inc., participated through witness Teah Shirk. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records including the fact-finding documents.

**ISSUES:**

Was claimant employed for the same hours and wages beginning June 18, 2017?  
Did the claimant meet the definition of being considered partially unemployed?  
Was the claimant able to work and available for work?  
Is the employer's account subject to charges?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The facts in this matter are undisputed. Claimant filed an original claim for benefits effective July 17, 2016. She filed an additional claim for benefits effective June 18, 2017. Claimant began her part-time employment for this employer in October 16, 2015. She separated from employment on Friday, June 23, 2017.

Claimant was hired to work part-time as a packer/puller. This employer operates a catalog and e-commerce business. Claimant was scheduled to work from 8:00 a.m. to 3:30 p.m. Monday, Tuesday, and Thursday each week as well as 8:00 a.m. to 1:30 p.m. on Wednesday and Friday each week. There were occasions when claimant did not work due to lack of production and work.

Claimant is paid hourly. Her hourly rate of pay when she was hired was \$9.75 and her rate when she was separated was \$10.00. The week of Sunday, June 18, 2017 through Saturday, June 24, 2017 claimant worked 3.62 hours on Monday, June 19, 2017 and was not working due to lack of production and lack of work for the remainder of that week. Claimant filed a weekly claim for benefits for the week of June 18, 2017 through June 24, 2017 and reported wages earned of \$121.00.

Claimant's wage history for this employer shows the following:

2015/4	2016/1
\$3,338	\$3,408

A decision determining that claimant was separated from employment for the sole purpose of accepting employment with a new employer was issued on July 12, 2017 (reference 07). That decision further stated that the employer will receive no additional charges on this claim for any weeks beginning after the date of separation.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was partially unemployed beginning June 18, 2017.

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.

Based on the evidence presented, it is clear that claimant was not working in the same hours and wages as contemplated in the original contract for hire for the week of June 18, 2017 through June 24, 2017. As such, claimant is not disqualified by virtue of Iowa Admin. Code r. 871-24.23(26).

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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Code § 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.

In this case, the claimant's circumstances fall under Iowa Code § 96.19(38)b(1). Claimant's regular full-time week was 8:00 a.m. to 3:30 p.m. Monday, Tuesday, and Thursday each week as well as 8:00 a.m. to 1:30 p.m. on Wednesday and Friday each week. Effective June 18, 2017, the employer unilaterally reduced her hours and she only worked 3.62 hours on Monday, June 19, 2017 for the week ending June 24, 2017. She was clearly working less than her regular full-time hours that week.

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 § 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 § 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 § 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 § 85.33, § 85.34, subsection 1, or § 85A.17, or responsible for paying indemnity insurance benefits.

Effective June 18, 2017, the claimant was not employed under the same hours and wages as contemplated at hire and she was not receiving the same employment from the employer that she received during the her base period, therefore, she is considered partially unemployed. Benefits are allowed based upon reporting of weekly earnings, so long as claimant is otherwise eligible.

**DECISION:**

The July 12, 2017 (reference 08) unemployment insurance decision is affirmed. The claimant was partially unemployed and benefits are allowed effective June 18, 2017, provided she is otherwise eligible and subject to any gross wages earned for each week of benefits claimed. The account of the employer, Seventh Avenue Inc., (account number 208945-000) may be charged for benefits paid the week ending June 24, 2017.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

db/rvs