

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**LASHONDA D CHAMBERS**

Claimant

**APPEAL NO. 15A-UI-04875-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DES MOINES RECEIVERSHIP SERVICES**

Employer

**OC: 03/29/15**

**Claimant: Respondent (2/R)**

Iowa Code Section 96.4(3) – Able & Available  
Iowa Code Section 96.4(3) – Still Employed Same Hours and Wages  
Iowa Code Section 96.7(2) – Employer Liability

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the April 13, 2015, reference 01, decision that allowed benefits to the claimant effective March 29, 2015 provided she was otherwise eligible for benefits and that held the employer's account could be charged for benefits, based on an Agency conclusion that the claimant was partially unemployed. After due notice was issued, a hearing was held on June 3, 2015. Claimant Lashonda Chambers participated. Connie Hickerson of Equifax represented the employer and presented testimony through Annie Waters. Exhibits One through Four were received into evidence. The administrative law judge took official notice of the agency's administrative record of wages reported by or for the claimant and benefits disbursed to the claimant (DBRO and WAGE-A).

**ISSUES:**

Whether the claimant has been able to work and available for work since establishing her claim for benefits.

Whether the claimant has been partially unemployed since establishing her claim for benefits.

Whether the employer's account may be assessed for benefits paid to the claimant...

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: In May 2014, Lashonda Chambers began her employment with Des Moines Receivership Services, d/b/a Ramada, as a full-time night auditor. Ms. Chambers continues in the employment. For most of the employment, the work hours have been 11:00 p.m. to 7:00 a.m., five nights per week. That worked out to be 40 hours per week. Ms. Chambers is a student at DMACC. On January 22, 2015, Ms. Chambers began a Tuesday evening class. In connection with that class, Ms. Chambers asked the employer to schedule her for only every other Tuesday overnight shift and the employer complied with the request. Ms. Chambers completed her class on March 12, 2015. On March 15, Ms. Chambers sent a message to the employer asking why

she only had 32 hours on the schedule that had been posted for March 22-28, 2015. On March 17, 2015, Amy McAninch, Front Office Manager, sent a reply message indicating the employee handbook deemed 32 hours per week to be full time, but that Ms. McAninch would see about getting Ms. Chambers more hours. At the start of the employment, the employer had provided Ms. Chambers with a handbook. The handbook included the following provision:

**Full-Time Associate**

Any associate who is regularly scheduled for work thirty-two (32) hours or more per week is considered to be a full-time associate.

Ms. Chambers' wage at the start of the employment was \$9.50 per hour. Effective August 16, 2014, the employer increased the wage to \$11.00 per hour. Effective May 16, 2015, the employer increased the wage to \$11.50 per hour.

Ms. Chambers established a claim for unemployment insurance benefits that was effective March 29, 2015, under the belief that she was partially unemployed. Workforce Development set Ms. Chambers' weekly benefit amount at \$278.00. Ms. Chambers received confusing advice regarding how to report her weekly wages, which eventually resulted in erroneous reporting of weekly wages and erroneous disbursement of weekly benefits as follows:

| <u>Week end date</u> | <u>Wages reported</u> | <u>Benefits paid</u> | <u>Actual Wages</u>     |
|----------------------|-----------------------|----------------------|-------------------------|
| 04/04/15             | 352.00                | 0.00                 | \$362.67 for 32.97 hrs. |
| 04/11/15             | 352.00                | 0.00                 | \$362.67 for 32.97 hrs. |
| 04/18/15             | 352.00                | 0.00                 | \$362.67 for 32.97 hrs. |
| 04/25/15             | 264.00                | 83.00                | \$365.20 for 33.2 hrs.  |
| 05/02/15             | 88.00                 | 259.00               | \$375.65 for 34.15 hrs. |
| 05/09/15             | 88.00                 | 259.00               | \$403.92 for 36.72 hrs. |
| 05/16/15             | 132.00                | 215.00               | \$421.25 for 36.63 hrs. |
| 05/23/15             | 134.00                | 213.00               | \$412.05 for 35.83 hrs. |
| 05/30/15             | 132.00                | 215.00               | \$416.88 for 36.25 hrs. |

**REASONING AND CONCLUSIONS OF LAW:**

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".

An individual shall be deemed partially unemployed in any week in which, 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. Iowa Code Section 96.19(38)(b).

Iowa Code section 96.7(1) and (2) provides, in relevant part, as follows:

Employer contributions and reimbursements.

1. Payment. Contributions accrue and are payable, in accordance with rules adopted by the department, on all taxable wages paid by an employer for insured work.

2. Contribution rates based on benefit experience.

a. (1) The department shall maintain a separate account for each employer and shall credit each employer's account with all contributions which the employer has paid or which have been paid on the employer's behalf.

(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.

[Emphasis added.]

The evidence in the record establishes that Ms. Chambers has not been partially unemployed during any of the weeks since she established her claim for benefits. Though there might have been a slight reduction in the number of hours the employer had for Ms. Chambers during a particular week, Ms. Chambers' weekly wages consistently exceeded her weekly benefit amount plus \$15.00 (\$278.00 + \$15.00 = \$293.00). Based on the wages alone, Ms. Chambers did not meet the definition of partially unemployed. The evidence further indicates that Ms. Chambers did not meet the "availability" requirement to be eligible for benefits because she was working full-time or near full-time hours. See Iowa Administrative Code rule 871-24.23(23). Because Ms. Chambers was not partially unemployed, the employer's account will not be charged for the benefits paid to Ms. Chambers for the period of April 19, 2015 through May 30, 2015.

Ms. Chambers was not eligible for the \$1,244.00 in benefits that she received for six-week period of April 19, 2015 through May 30, 2015. This matter will be remanded to the Benefits Bureau for entry of an overpayment decision regarding those benefits.

**DECISION:**

The April 13, 2015, reference 01, decision is reversed. The claimant has not met the availability requirement and was not partially unemployed since she established her claim for benefits. Accordingly, the claimant was not eligible for the \$1,244.00 in benefits that she received for

six-week period of April 19, 2015 through May 30, 2015. The employer's account will not be charged for those benefits. This matter will be remanded to the Benefits Bureau for entry of an overpayment decision concerning the \$1,244.00 in benefits that the claimant received for six-week period of April 19, 2015 through May 30, 2015.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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