

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRONICA WILSON
Claimant

HY VEE INC
Employer

APPEAL 21A-UI-07276-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/26/20
Claimant: Appellant (1R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications
Iowa Code § 96.19(38) – Total and Partial Unemployment

STATEMENT OF THE CASE:

Bronica Wilson (claimant) appealed an Iowa Workforce Development March 8, 2021, decision (reference 01) that denied benefits based on the number of hours she was working with Hy-Vee (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 19, 2021. The claimant participated personally. The employer was represented by Barbara Buss, Hearings Representative, and participated by Amy Kramer, Store Manager. The administrative law judge took official notice of the administrative file.

The claimant sent an email to the administrative law judge after the record had closed in an attempt to add to her testimony. That information was not read or considered because it was not provided to the other party and during the time the record was open.

ISSUES:

The issue is whether the claimant is eligible for total or partial unemployment benefits, still employed at the same hours and wages, whether the claimant is able and available for work and/or whether the employer's account is subject to charge.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked from September 12, 2016, to March 16, 2020, as a full-time restaurant assistant manager at an hourly pay rate of \$18.00. The claimant chose to accept a new job as a full-time server at a pay rate of \$13.00 per hour, plus tips. Due to the pandemic, the restaurant closed.

On March 17, 2020, the claimant accepted a different job as an Aisles On Line person at an hourly rate of \$13.00 and working thirty hours per week. The claimant wanted the job so she could continue to have her benefits deducted from her paycheck. She worked in this capacity

until the restaurant opened on June 7, 2020. She returned to her job as a server the week ending July 13, 2020.

The claimant had another part-time job at Cedar Rapids Light House where she worked about fourteen hours per week. She was laid off her job at Cedar Rapids Light House from the end of April 2020 until July 25, 2020, when she returned to work.

The claimant filed for unemployment insurance benefits with an effective date of April 26, 2020. Her weekly benefit amount was determined to be \$500.00. The claimant filed for unemployment insurance benefits because she accepted a job at a lower hourly rate of pay and she was laid off work at Cedar Rapids Light House. Removal of the employer's wages from the claim would make the claimant monetarily ineligible for unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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. 871-24.23(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.

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.

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 96.7(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.

The claimant was not totally or temporarily unemployed because she was working for the employer at all times. When a worker is offered and accepts a job at a certain pay rate and number of hours, that is the agreed upon contract for hire between the employer and the worker. On March 17, 2020, the claimant accepted a different job at an hourly rate of \$13.00 for thirty hours per week.

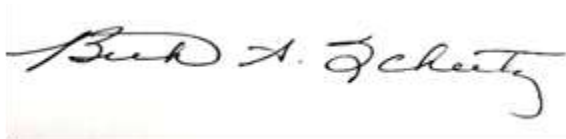
When she filed for unemployment insurance benefits on April 26, 2020, the claimant was still employed at the same hours and wages in her part-time job as was agreed when she was hired. She cannot be considered totally, partially, or temporarily employed when she performs the same work for the same wages. In addition, removing this employer's wages would make the claimant monetarily ineligible for unemployment insurance benefits. The claimant is not eligible to receive unemployment insurance benefits as of April 26, 2020. Benefits are denied.

The issue of whether claimant has been overpaid unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

DECISION:

The March 8, 2021, (reference 01) unemployment insurance decision is affirmed. The claimant is still employed at the same hours and wages and is not partially unemployed. She is not able and available for other work. Benefits are denied effective April 26, 2020.

The issue of whether claimant has been overpaid unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.



Beth A. Scheetz
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

May 26, 2021
Decision Dated and Mailed

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