

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STEPHANIE D ALCORN
Claimant

APPEAL 17A-UI-08170-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CENTRAL IOWA OB/GYN SPECIALISTS
Employer

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

Iowa Code § 96.4(3) – Able and Available
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:

The employer filed an appeal from the August 9, 2017, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 30, 2017. Claimant had registered for the hearing but did not participate as she did not answer the telephone when called by the administrative law judge to begin the hearing. Employer participated through Christine Hollister, Business Office Administrator. Employer's Exhibit 1 was entered and received into the record.

ISSUES:

Is the claimant partially unemployed, is she able to and available for work, is she still employed at the same hours and wages, and is the employer's account is liable for potential charges.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was hired to work full-time as a nurse in 2007. In 2016 she became nurse midwife and her pay was increased to reflect her change in duties. As part of being a nurse midwife the claimant was required to take call, that is to be available to work on nights and weekends. She was required to complete a particular number of deliveries under the direct supervision of a physician before the local hospital would allow her to perform deliveries on her own. The claimant was off work for her own maternity leave through January 2017. When she returned to work in February 2017 the employer reduced her hours down to part time due to business needs of the employer. The claimant did not ask to have her hours reduced to part-time. In July 2017 the employer decided the claimant would no longer be required to take call so her rate of pay was reduced from approximately \$39.42 per hour down to \$34.62 per hour. The claimant filed a claim for unemployment insurance benefits with an effective date of July 16, 2017. She has reported her gross wages each week she has claimed benefits. As her gross wages are well over her weekly benefit amount, no benefits have been paid to her since she filed her claim for benefits.

The claimant is going to separate from this employer on or about September 8. The issue of claimant's permanent separation is remanded to the unemployment insurance service center (UISC) for an initial review and determination.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is partially unemployed effective July 16, 2017, and the employer's account is subject to charges.

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 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.

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.

The employer reduced the claimant's hours due to business needs, and reduced her pay when she was removed from the requirement that she take call. Because the claimant is not currently employed under the same hours and wages as contemplated at the time she became a full time nurse, midwife, she is considered partially unemployed. Benefits may be allowed based upon reporting of weekly earnings. For whatever period the employer is not offering the same wages and hours as contemplated in the contract of hire, it may be liable for benefit charges to its account.

REMAND:

The upcoming permanent separation issue is remanded to the UISC for a review and determination.

DECISION:

The August 9, 2017, (reference 01) decision is affirmed. The claimant is partially unemployed and benefits are allowed, provided she is otherwise eligible. She is required to report gross wages earned for each week of benefits claimed. The employer's account (328984) may be liable for charges.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs