

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CAROL E THUMMA

Claimant

APPEAL 20A-UI-03165-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALL HEART STAFFING INC

Employer

OC: 03/15/20

Claimant: Respondent (1R)

Iowa Code § 96.19(38)b – Definitions – Total, partial unemployment
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search
Iowa Code § 96.7(2)A(2) – Charges – Same base period employment
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
PL 116-136 § 2104(b) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

Employer filed an appeal from the April 13, 2020 (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on May 8, 2020, at 8:00 a.m. Claimant participated. Employer participated through Joel Katcher, Owner and CEO. Claimant's Exhibit A was admitted. Employer's Exhibit 1 was admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant is eligible to receive partial benefits.
Whether the claimant is able to and available for work.
Whether claimant is still employed at the same hours and wages.
Whether employer's account is subject to charge.
Whether claimant was overpaid benefits.
Whether claimant is eligible for Federal Pandemic Unemployment Compensation.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began her employment with All Heart Staffing, Inc. as a full-time office assistant on January 16, 2015. Claimant worked Monday through Friday from 8:30 a.m. until 5:00 p.m. and earned \$14.50 per hour. On March 17, 2020, employer reduced claimant's hours to one (eight hour) day per week effective immediately due to lack of work caused by Covid-19. Claimant was able to and available for work her regular full-time hours. Claimant resigned her employment effective April 6, 2020 in order to accept other full-time employment.

Claimant filed an initial claim for unemployment insurance benefits effective March 15, 2020. Claimant filed weekly benefit claims for the weeks ending March 21, 2020 through April 25, 2020 and reported her earnings from employer. Claimant received regular unemployment insurance benefits for the benefit weeks ending March 21, 2020 through April 25, 2020 and Federal Pandemic Unemployment Compensation for the benefit weeks ending April 4, 2020 through April 25, 2020. There has been no initial investigation or decision regarding claimant's separation from employment. The issue of claimant's separation and related matters should be remanded to the Benefits Bureau for an initial investigation and decision.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was partially unemployed from March 17, 2020 through April 6, 2020. Benefits are allowed for the benefit weeks ending March 21, 2020 through April 4, 2020, provided claimant is otherwise eligible.

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 section 96.19(38)b provides:

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.

Iowa Code section 96.7(2)a(2) 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.

Between March 17, 2020 and April 6, 2020, claimant was not employed full-time as contemplated at hire and earned less than her weekly benefit amount plus fifteen dollars; therefore, claimant was partially unemployed during that period of time. Regular unemployment insurance benefits are allowed for the three benefit weeks ending March 21, 2020 through April 4, 2020. Claimant properly reported her weekly earnings for those benefit weeks and, thus, is not overpaid regular unemployment insurance benefits. Employer may be liable for benefit charges to its account for the benefit weeks ending March 21, 2020 through April 4, 2020. Because claimant was eligible for regular unemployment benefits for the benefit week ending April 4, 2020, she is also entitled to Federal Pandemic Unemployment Compensation for that benefit week. Claimant is not overpaid Federal Pandemic Unemployment Compensation for the benefit week ending April 4, 2020.

The issues of claimant's separation from employment, whether claimant has been overpaid regular unemployment insurance or Federal Pandemic Unemployment Compensation since her separation, whether claimant should repay those benefits and whether employer should be charged are remanded to the Benefits Bureau for an initial investigation and decision.

DECISION:

The April 13, 2020 (reference 01) unemployment insurance decision is affirmed. Claimant was partially unemployed between March 17, 2020 and April 6, 2020. Regular unemployment benefits are allowed for the benefit weeks ending March 21, 2020 through April 4, 2020, provided claimant is otherwise eligible. Claimant is not overpaid regular unemployment insurance benefits for the benefit weeks ending March 21, 2020 through April 4, 2020 or Federal Pandemic Unemployment Compensation for the benefit week ending April 4, 2020. Employer's account may be liable for charges for the benefit weeks ending March 21, 2020 through April 4, 2020.

REMAND:

The issues of claimant's separation from employment, whether claimant has been overpaid regular unemployment insurance of Federal Pandemic Unemployment Compensation since her separation, whether claimant should repay those benefits and whether employer should be charged are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.



Adrienne C. Williamson
Administrative Law Judge
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May 13, 2020
Decision Dated and Mailed

acw/scn