

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROSALYN F BECK

Claimant

APPEAL 20A-UI-05193-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BOMGAARS SUPPLY INC

Employer

OC: 03/29/20

Claimant: Appellant (4)

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment

Iowa Code § 96.4(3) – Ability to and Availability for Work

Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

Rosalyn Beck (claimant) appealed a representative's May 27, 2020, decision (reference 01) that denied benefits based on her employment with Bomgaars Supply (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 30, 2020. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. The administrative law judge took official notice of the administrative file.

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 was hired on November 4, 2004, as a part-time seasonal department cashier. She worked four or five days per week from 4:00 p.m. to 8:00 p.m. or 8:30 p.m. Her hours and work have not changed.

The claimant also worked at Apple Tree as a full-time cook from 6:45 a.m. to 2:00 p.m. On March 31, 2020, the supervisor at Apple Tree laid her off due to the pandemic. On June 1, 2020, she was recalled to work.

The claimant filed for unemployment insurance benefits with an effective date of March 29, 2020. She filed weekly claims through the week ending May 30, 2020, and reported her income from the employer. Her weekly benefit amount was determined to be \$416.00. Each week, the claimant received partial state unemployment insurance benefits through the week ending May 16, 2020, for a total of \$1,504.00 in state unemployment insurance benefits after the

separation from employment. For the two-week period ending May 30, 2020, the department disqualified the claimant from receiving benefits. She also received \$4,200.00 in Federal Pandemic Unemployment Compensation.

REASONING AND CONCLUSIONS OF LAW:

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.

Iowa Admin. Code r. 871-23.43(4)a provides in part:

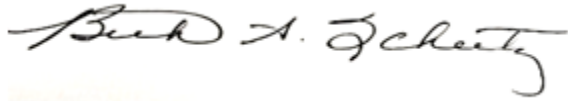
(4) Supplemental employment.

a. An individual, who has been separated with cause attributable to the regular employer and who remains in the employ of the individual's part-time, base period employer, continues to be eligible for benefits as long as the individual is receiving the same employment from the part-time employer that the individual received during the base period. The part-time employer's account, including the reimbursable employer's account, may be relieved of benefit charges....

The claimant was separated from her regular job at Apple Tree and earned less than her weekly benefit amount plus fifteen dollars with the employer each week after March 29, 2020. The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). The claimant has offered testimony that she is able and available for work. Because the claimant has other base-period wages and is currently employed part-time, she is considered partially unemployed. Partial benefits are allowed. Inasmuch as the current part-time employer is offering the same wages and hours as in the base period, no benefit charges shall be made to its account.

DECISION:

The May 27, 2020, (reference 01) unemployment insurance decision is modified in favor of the appellant. The claimant is partially unemployed and benefits are allowed, provided she is otherwise eligible. The account of the current part-time employer (account number 021217) shall not be charged.



Beth A. Scheetz
Administrative Law Judge
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July 10, 2020
Decision Dated and Mailed

bas/mh