

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MELINDA J GEARHART**

Claimant

**APPEAL NO. 12A-UI-12002-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SCHULTE HOSPITALITY GROUP INC**

Employer

**OC: 10/16/11**

**Claimant: Appellant (4)**

Iowa Code section 96.4(3) – Able and Available  
Iowa Code section 96.19(38)a & b – Total and Partial Unemployment  
Iowa Code section 96.7(2)a(2) – Same Base Period Employment  
871 IAC 24.22(2)f – Part-Time Worker - Able and Available

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a decision of a representative dated October 1, 2012, reference 03, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on November 7, 2012. The claimant participated personally. The employer participated by Martin Hanson, the vice president of hotel performance.

There is no dispute between the claimant and this employer. No actual testimony was taken. Official notice is taken of agency records.

**ISSUE:**

Whether the claimant is eligible for partial unemployment insurance benefits as of September 9, 2012.

**FINDINGS OF FACT:**

The administrative law judge, having considered all of the evidence in the record, makes the following findings of fact:

The claimant established an original claim for unemployment insurance benefits after her termination by Panera Bread in October 2011. The claimant obtained part-time employment with this employer, Schulte Hospitality Group, Inc., and continues to work part time for this employer. The claimant reported her income from Schulte Hospitality Group and also received partial unemployment insurance benefits through the week ending September 8, 2012. The claimant was then disqualified as not being able and available for work.

The claimant's weekly rate for unemployment insurance benefits is \$257.00. For the five weeks from September 15, 2012, through October 13, 2012, the claimant's earnings have been in excess of her weekly benefit amount.

## 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, 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.

An individual shall be deemed partially unemployed in any week in which 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) 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.

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.

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.

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.

871 IAC 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....

Because the claimant has other base period wages, some of which were full time, and is currently employed part time, she is considered partially unemployed. Partial benefits may be allowed if she is otherwise eligible.

The claimant is not eligible for partial unemployment insurance benefits for the weeks from September 15, 2012, to October 13, 2012. The reason is that her reported earnings are in excess of her weekly benefit amount and therefore she is not considered partially employed. The claimant still has wages in her base period that may qualify her for partial unemployment insurance benefits in the future. This employer will be relieved from any charges.

**DECISION:**

The October 3, 2012, reference 03, decision is modified in favor of the appellant. The claimant is not disqualified based on her current part-time employment but rather because she has earned wages in excess of her weekly benefit amount. She may qualify for benefits in the future. The account of this employer (511748) will not be charged.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/css