

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MARSHALL PASS**

Claimant

**KWIK TRIP INC**

Employer

**APPEAL 18A-UI-03163-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/04/18**

**Claimant: Appellant (4)**

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Iowa Code § 96.4(3) – Able and Available

Iowa Admin. Code r. 871-24.23(26) – Able & Available – Part time, same hours and wages

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

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

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the March 5, 2018 (reference 01) unemployment insurance decision that found claimant was ineligible for unemployment benefits because he was still employed for the same hours and wages as in his original contract of hire. The parties were properly notified of the hearing. A telephone hearing was held on April 4, 2018. The claimant participated. The employer did not participate. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

**ISSUES:**

Is the claimant able to work and available for work?

Is claimant employed for the same hours and wages?

Does the claimant meet the definition of being considered partially unemployed?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The facts in this matter are undisputed. Claimant was employed part-time for this employer beginning sometime in 2015. He was hired as a part-time worker. He continues to work part-time for the employer. He works approximately 12 hours per week.

Claimant filed his initial claim for unemployment because he became separated from his full-time employer, Mississippi Valley Regional. He was working for Mississippi Valley Regional Monday through Friday each week from 8:30 a.m. to 4:30 p.m.

Since filing his initial claim for benefits effective February 4, 2018, claimant has been able to and available for full-time work. He has made at least two employer contacts for each weekly-continued claim he filed between February 4, 2018 and March 3, 2018. He has reported his gross wages and vacation pay earned when filing his weekly-continued claims for benefits.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is partially unemployed effective February 4, 2018.

Iowa Code § 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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 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 § 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 § 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 § 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 § 85.33, § 85.34, subsection 1, or § 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. On a second benefit year claim where the individual worked only for the part-time employer during the base period and the lag quarter, the part-time employer shall not be considered for relief of benefit charges with the onset of the second benefit year. It is the part-time employer's responsibility to notify the department of the part-time employment situation so the department may render a decision as to the availability of the individual and benefit charges. The individual is required to report gross wages earned in the part-time employment for each week claimed and the wages shall be deducted from any benefits paid in accordance with Iowa Code section 96.3(3).

Because the claimant has other base-period wages and is currently employed part-time, he may be considered partially unemployed. Partial benefits may be allowed if he is otherwise eligible. Inasmuch as the current part-time employer is offering the same wages and hours as in the base period and contemplated at hire, no benefit charges shall be made to its account. Iowa Admin. Code r. 871-23.43(4)a.

**DECISION:**

The March 5, 2018 (reference 01) unemployment insurance decision is modified in favor of appellant. The claimant is partially unemployed and benefits are allowed, provided he is otherwise eligible. The account of the current part-time employer (account number 116702) shall not be charged. The benefits withheld shall be paid to the claimant, provided he is otherwise eligible. Claimant is required to report gross wages for the week in which they are earned for the purpose of establishing continuing eligibility for partial unemployment benefits.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

db/rvs