

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ASHLEY N WOLF
Claimant

BLACK HAWK NURSING AND REHABILITA
Employer

APPEAL 21A-UI-22039-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 08/15/21
Claimant: Respondent (4)**

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages
Iowa Code § 96.1A(37) – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

Black Hawk Nursing and Rehabilta, the employer/appellant, filed an appeal from the September 22, 2021, (reference 01) unemployment insurance (UI) decision that allowed benefits as of August 15, 2021 due to a short-term layoff. The parties were properly notified of the hearing. A telephone hearing was held on December 1, 2021. The employer participated through Tami Martin, human resources, and Natalie Olds, Personnel Planners Inc hearing representative. Ms. Wolf did not participate in the hearing. The administrative law judge took official notice of the administrative record. Employer's Exhibit 1 was admitted as evidence.

ISSUES:

Is Ms. Wolf able to and available for work?
Is Ms. Wolf temporarily or partially unemployed?
If so, is the employer's account subject to charge?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Wolf began working for the employer, a base period employer, on July 6, 2021. She works as a full-time certified medical assistant. Her hourly pay \$18.75. Ms. Wolf has no other base period wages.

In early August 2021, a member of Ms. Wolf's household tested positive for COVID-19. The employer's policy provides that if a person with whom an employee resides tested positive for COVID-19, the employee is required to self-quarantine for 10 days. After the household member tests negative, the employee must self-quarantine 14 days. Ms. Wolf self-quarantined 10 days from August 10 through August 19, and for 14 days from August 20 through September 2. She returned to work on September 3. Ms. Wolf has otherwise been continuously employed by this employer since her hire date under the same terms and conditions as contemplated at hire.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that Ms. Wolf is temporarily unemployed from August 10, 2021 through September 2, 2021.

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 section 96.1A, subsection 37, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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 § 96.1A(37) 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 Admin. Code r. 871-24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced

workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

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

Ms. Wolf did not work from August 10, 2021 through September 2, 2021 because the employer's policy required her to self-quarantine for 10 days then for 14 days. Ms. Wolf was not sick. Ms. Wolf was temporarily unemployed because of the COVID-19 public health emergency and the employer's policy requiring her to self-quarantine. Benefits are allowed from August 10, 2021 through September 2, 2021.

Since the employer was not offering Ms. Wolf the same hours and wages from August 10, 2021 through September 2, 2021 as contemplated at hire, the employer's account should be charged.

DECISION:

The September 22, 2021, (reference 01) unemployment insurance decision is affirmed. Ms. Wolf is temporarily unemployed from August 10, 2021 through September 2, 2021. Benefits are allowed during these weeks, provided Ms. Wolf is otherwise eligible. This employer's account shall be charged.



Daniel Zeno
Administrative Law Judge
Iowa Workforce Development
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

January 6, 2022
Decision Dated and Mailed

dz/kmj