

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMY J STAGMAN
Claimant

APPEAL NO. 11A-UI-04278-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOC SERVICES
Employer

OC: 12/26/10
Claimant: Appellant (1)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated April 1, 2011, reference 02, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 26, 2011. Claimant participated. Employer participated by Shelly Pratt, Director of Human Resources, and Kristi Kidrowski, Banquet Captain. The record consists of the testimony of Amy Stagman; the testimony of Shelly Pratt; the testimony of Kristi Kidrowki; Claimant's Exhibit A; and Employer's Exhibits 1-14. Official notice is taken of agency records.

ISSUE:

Whether the claimant is eligible for partial unemployment insurance benefits.

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

The claimant works as a part time banquet employee for the employer, which is a casino and hotel located in Waterloo, Iowa. The claimant was hired on January 16, 2009. The claimant does not have regularly scheduled hours. She works when work is available and when she is available. The claimant is attending school and her hours are limited to those when she is not in school. The number of hours available for work varies from week to week. No set number of hours was guaranteed when the claimant began working for the employer. The claimant is still employed by the employer on the same basis as she was when she was hired.

The claimant established her first claim for benefits with an original claim date of December 27, 2009. Wages in the base period for that claim included wages from the claimant's last full-time employer – Wingfoot Commercial Tires. The last wages reported for Wingfoot Commercial Tires was in the second quarter of 2009. This case concerns a claim date of December 26, 2010. There are no full-time wages reported in this base period for that employer.

The claimant is presently drawing emergency unemployment compensation benefits (EUCU) on her December 27, 2009, claim. In a decision dated January 22, 2010, this employer was relieved of charges on the December 27, 2009 claim.

REASONING AND CONCLUSIONS OF LAW:

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 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....

The evidence in this case established that with respect to the claim dated December 26, 2010, the claimant is not eligible for unemployment insurance benefits because the claimant is still employed in her job with this employer at the same hours and wages as in her original contract of hire.

It should be noted, however, that this decision does not affect the claimant's receipt of EUCU benefits with respect to her December 27, 2009 claim. This employer (321420-000) has already

been relieved of charges on that claim as well. The disqualification in this case applies only to the December 26, 2010, claim.

DECISION:

The decision of the representative dated April 1, 2011, reference 02, is affirmed. The claimant is not eligible for unemployment insurance benefits on her December 26, 2010, claim. This decision does not affect the claimant's receipt of EUCU benefits on her December 27, 2009, claim.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css