

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BERTEN JOI L LISENBEE
Claimant

APPEAL 20A-UI-05450-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SLB OF IOWA LC
Employer

OC: 04/05/20
Claimant: Respondent (4-R)

Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Available – Part-time Same Wages and Hours
Iowa Code § 96.3(7) – Overpayment of Benefits
Public Law 116-136 § 2104(b) – Federal Pandemic Unemployment Compensation
Iowa Code § 96.7(2)a(2) – Employer Chargeability

STATEMENT OF THE CASE:

On June 8, 2020, SLB of Iowa, LC (employer) filed an appeal from the June 2, 2020, reference 01, unemployment insurance decision that allowed benefits effective April 5, 2020, because the agency determined Berten Joi L. Lisenbee (claimant) was not employed in the same hours and wages contemplated in the contract of hire. After due notice was issued, a telephone hearing was held on July 16, 2020. The claimant participated personally. The employer participated through Karen Beard, Human Resources Manager. No exhibits were offered into the record. The administrative law judge took official notice of the claimant's claim and wage histories

ISSUES:

Is the claimant totally, partially, or temporarily unemployed?
Was the claimant able to and available for work effective April 5, 2020?
Is the employer's account subject to charge?
Has the claimant been overpaid regular unemployment benefits and Federal Pandemic Unemployment Compensation (FPUC)?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began working for the employer on June 20, 2016 and promoted up to her most recent position of full-time Certified Bakers Trainer earning \$15.50 an hour. She filed her claim for benefits effective April 5, 2020 when the employer reduced her hours as a result of the COVID-19 pandemic. The claimant's weekly benefit amount is \$391 and the only wage credits in her base period came from the employer.

The claimant reported wages for most of the weeks she filed for benefits. However, she has not accurately reported her wages earned. The following shows the amount the claimant reported in wages earned and the wages she actually earned each week:

Week Ending	Income Reported	Income Earned	Benefits Received	Over or Under Paid Benefits
04/11/20	\$0	\$72.54	\$391	Overpaid
04/18/20	\$90	\$171.59	\$391	Overpaid
04/25/20	\$330	\$287.99	\$158	Underpaid
05/02/20	\$404	\$351.08	\$0	Underpaid
05/09/20	\$609	\$240.87	\$0	Underpaid
05/16/20	\$409	\$236.07	\$0	Underpaid
05/23/20	\$248	\$586.37	\$240	Overpaid
05/30/20	\$208	\$398.50	\$280	Overpaid
06/06/20	\$90	\$161.67	\$391	Overpaid
06/13/20	\$600	\$468.72	\$0	Correct benefits paid
06/20/20	\$660	\$403.93 + \$620 in vacation pay	\$0	Correct benefits paid
06/27/20	\$292	\$215.31	\$196	Underpaid
07/04/20	\$480	\$434.62	\$0	Correct benefits paid

In addition to the \$2,131 in regular benefits outlined above, the claimant has also received \$4,800 in FPUC. Iowa Workforce Development (IWD) is not charging employers for benefits paid in the second quarter of 2020.

REASONING AND CONCLUSIONS OF LAW:

- 1. Is the claimant totally, partially, or temporarily unemployed? Was the claimant able to and available for work effective April 5, 2020?*

For the reasons that follow, the administrative law judge concludes that the claimant was partially unemployed during any week in which she earns less than \$406 in wages, and partial benefits, as well as FPUC, are allowed for those weeks. As the claimant is either partially unemployed or not unemployed under Iowa law, the issue of whether she is able to and available for work during the weeks she has filed to date is moot.

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 § 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.

The claimant was hired into a full-time position. She has worked each week she has filed for benefits. As a result, in any week she works and earns less than her weekly benefit amount plus fifteen dollars, or \$406, she is partially unemployed. Therefore, partial benefits during the weeks she is partially unemployed are allowed.

Any week in which the claimant earns more than \$406 in wages, she does not meet the definitions of total, partial, or temporary unemployment and benefits are denied. As the claimant is partially unemployed or not considered unemployed, the issue of able to and available for work for the weeks she has filed to date is moot.

II. Is the employer's account subject to charge?

For the reasons that follow, the administrative law judge concludes the employer's account will not be charged for any benefits for which the claimant might be entitled from April 5 through June 27.

Iowa Code section 96.7(2)a(2)(a), (b), and (c) provides:

Employer contributions and reimbursements.

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.

Normally, the employer would be charged for the claimant's benefits. This employer was the only employer in her base period and the employer was not employing the claimant in her usual contract of hire. However, due to the pandemic, the agency is waiving charges to the employers account during the second quarter of 2020.

III. Has the claimant been overpaid regular unemployment benefits and FPUC?

As delineated in the findings of fact, the claimant is over and under paid benefits. The issue of how much she has been over and under paid is remanded to Investigations and Recovery or the Benefits Bureau for review and correction.

DECISION:

The June 2, 2020, reference 01, unemployment insurance decision is modified in favor of the appellant. The claimant is partially unemployed during any week in which she earns less than \$406 and benefits are allowed. IWD has waived all charges to the employer's account for the second quarter of 2020 and the employer's account will not be charged for the benefits paid through June 27, 2020.

REMAND:

As delineated in the findings of fact, the claimant is over and under paid benefits. The issue of how much she has been over and under paid is remanded to Investigations and Recovery or the Benefits Bureau for review and correction.

A handwritten signature in dark ink, reading "Stephanie R. Callahan" with a long, sweeping horizontal line extending to the right.

Stephanie R. Callahan
Administrative Law Judge

August 3, 2020
Decision Dated and Mailed

src/sam