

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TAMMY J SILVERS
Claimant

APPEAL NO. 14A-UI-04024-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**QUALITY HOME CARE PROFESSIONALS
INC**
Employer

OC: 03/30/14
Claimant: Respondent (4-R)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.4(3) – Still Employed Same Hours and Wages
Iowa Code Section 96.7(2) – Employer Liability

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 9, 2014, reference 01, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer could be charged for benefits based on an agency conclusion that the claimant was able and available for work but partially-unemployed. After due notice was issued, a hearing was held on May 6, 2014. Claimant Tammy Silvers did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Amber Carter represented the employer. Exhibits One through Nine were received into evidence. The administrative law judge took official notice of the agency record of benefits disbursed to the claimant.

ISSUES:

Whether the claimant was able to work and available for work during the two-week period of March 30, 2014 through April 12, 2014.

Whether the claimant was partially unemployed during the two-week period of March 30, 2014 through April 12, 2014.

Whether the employer's account may be assessed for benefits paid to the claimant for the two-week period of March 30, 2014 through April 12, 2014.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Tammy Silvers established a claim for benefits that was effective March 30, 2014 and received \$351.00 in benefits for the two-week period of March 30, 2014 through April 12, 2014. Ms. Silvers had stopped showing up for work with Quality Home Care Professionals, Inc., after the employer cut her work hours from the one day a week that Ms. Silvers had requested to no hours outside of mandatory training. Ms. Silvers thereafter failed to participate in mandatory trainings in February and March. On March 31, 2014, Ms. Silvers contacted the employer in response to

receiving a written reprimand for being absent from the training in February and March 2014 without notifying the employer. The employer specifically spoke to Ms. Silvers about the need to check her work schedule and appear for mandatory training and shifts. The employer nonetheless did not have any work hours for Ms. Silvers during the two-week period of March 30, 2014 through April 12, 2014.

REASONING AND CONCLUSIONS OF LAW:

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 96.19, 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".

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. Iowa Code Section 96.19(38)(b).

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. 871 IAC 24.23(26). Contract for hire merely means the established conditions of the employment. See Wiese v. Iowa Dept. of Job Service, 389 N.W.2d 676, 679 (Iowa 1986).

Iowa Code section 96.7(1) and (2) provides, in relevant part, as follows:

Employer contributions and reimbursements.

1. Payment. Contributions accrue and are payable, in accordance with rules adopted by the department, on all taxable wages paid by an employer for insured work.

2. Contribution rates based on benefit experience.

a. (1) The department shall maintain a separate account for each employer and shall credit each employer's account with all contributions which the employer has paid or which have been paid on the employer's behalf.

(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.

[Emphasis added.]

The weight of the evidence indicates that Ms. Silvers was partially unemployed, but not available for work within the meaning of the law during the two-week period of March 30, 2014 through April 12, 2014. Ms. Silvers has the burden of demonstrating compliance with the availability requirement during each week for which she claimed benefits. Ms. Silvers presented no evidence to meet her burden of proof. Because Ms. Silvers was not available for work within the meaning of the law, she was not eligible for the benefits for the two-week period of March 30, 2014 through April 12, 2014. Because Ms. Silvers was not eligible for benefits for those two weeks, the employer's account will not be charged for benefits paid to the claimant for those two weeks.

This matter will be remanded for entry of an overpayment decision concerning the benefits disbursed to Ms. Silvers for the two-week period of March 30, 2014 through April 12, 2014.

DECISION:

The claims deputy's April 9, 2014, reference 01 is modified as follows. The claimant was partially unemployed, but not available for work within the meaning of the law during the two-week period of March 30, 2014 through April 12, 2014. The claimant was not eligible for the benefits for the two-week period of March 30, 2014 through April 12, 2014. The employer's account will not be charged for benefits paid to the claimant for those two weeks.

This matter is remanded for entry of an overpayment decision concerning the benefits disbursed to claimant for the two-week period of March 30, 2014 through April 12, 2014.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs