

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ALINGA L GODBER
Claimant

LEXICODE CORPORATION
Employer

APPEAL 16A-UI-12961-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/30/16
Claimant: Appellant (2)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a – Same Base Period Employment

STATEMENT OF CASE:

The claimant filed an appeal from a decision of a representative dated December 2, 2016 (reference 02), which held the claimant ineligible for benefits, finding she was still working for the employer at the same hours and wages for which she was hired. After due notice, a hearing was scheduled for and held on December 22, 2016. The claimant participated personally. The employer failed to respond to the hearing notice and did not participate. Department exhibit D-1 was received into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Does the claimant meet the definition of being considered partially unemployed?
Is the claimant able to and available for work?

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: The claimant currently works for Lexicode Corporation as a surgical outpatient coder, part-time. From July 2015 through September 11, 2016, the employer had full-time work available for the claimant as contemplated in the original contract of hire. The claimant's rate of pay has remained at \$28.50 per hour, which is the same rate for which she was hired.

The employer initiated a change in the agreement of hire with the claimant effective September 12, 2016 (Department exhibit D-1), by reducing the claimant's hours from full-time to part-time, with no guarantee of hours. The claimant's hours are now determined based on how many charts are available for her to code each day she logs on the employer's database. The claimant does not know each week of how many hours she will work until she logs on each day and sees what work is available. The employer also eliminated the claimant's benefits since moving her to part-time.

The claimant established a claim for benefits effective October 30, 2016. Since establishing her claim for benefits, her hours per week have ranged from 12 to 26.2. The claimant has not refused any available hours and has no other limitations to working full-time hours. The claimant has even inquired with this employer how to obtain additional hours. The claimant has no other employment and did not file as a result of reduction or elimination of hours from any other employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant may be partially unemployed beginning October 30, 2016.

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".

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 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.

Because the claimant is not currently employed under the same hours and wages as contemplated at hire, she is considered partially unemployed. Benefits may be allowed based upon reporting of weekly earnings. For whatever period the employer is not offering the same wages and hours as contemplated in the contract of hire, it may be liable for benefit charges to its account.

Partial benefits based upon payment of gross wages are calculated using the following formula:

Gross wages – 25% of WBA = deduction from benefits rounded down.

For example:

20 hours x \$8.00 per hour = \$160 gross wages
\$280 WBA x .25 = \$70 deduction from benefits
\$160 - \$70 = \$90 deduction from benefits
\$280 - \$90 = \$190 partial benefits for a week with \$160 in gross wages

DECISION:

The December 2, 2016, (reference 02) decision is reversed. The claimant is partially unemployed and benefits are allowed, provided she is otherwise eligible. She is required to

report gross wages earned for each week of benefits claimed. The employer's account may be liable for charges.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/rvs