

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CASHMERE A FELLING
Claimant

B AWAKE INC
Employer

APPEAL 19A-UI-00526-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/09/18
Claimant: Respondent (1R)**

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-23.43(4)a – Supplemental Employment

STATEMENT OF THE CASE:

The employer filed an appeal from the January 9, 2019, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on February 4, 2019. Claimant did not participate. Employer participated through owner Larry Janda. Official notice was taken of the administrative record, specifically claimant's wage records.

ISSUES:

Is the claimant partially unemployed and available for work?
If so, is the employer's account liable for potential charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on May 8, 2017. Claimant last worked as a part-time executive pastry chef, but was initially hired in the position to work full-time. Claimant was separated from employment on January 28, 2018. From the time of her hire until July or August 2018, claimant worked full-time, approximately 32 hours per week, when her hours were reduced to approximately 20 hours per week. The reason for the reduction in hours is because one of the employer's two locations had closed. In December 2018 claimant's hours were reduced again to approximately 15 hours per week in order to cut costs. The claimant told the employer she had been able to pick up hours with her other part-time employer, Cedar Rapids Country Club, but her wage records show that employment continued to be part-time as well.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is partially unemployed and this employer is not relieved of benefit charges.

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 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 section 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.

The claimant does have other base-period wages with a part-time employer, but her wage records indicate this employer has been her regular full-time employer throughout her base period. Her wage records also show that while she may have supplemental part-time employment, she is not working full-time hours with the supplemental employer. Claimant's regular full-time hours with this employer were reduced in order to cut costs after one of its two locations closed. Inasmuch the level of employment is not consistent with the base period wage history with this employer, she may be considered partially unemployed and this employer may be liable for benefit charges. Claimant is reminded that she must continue to report any wages earned when filing her weekly continued claims.

DECISION:

The January 9, 2019, (reference 01) unemployment insurance decision is affirmed. The claimant is partially unemployed and benefits are allowed, provided she is otherwise eligible. The account of this employer (account number 534493-000) may be charged. Claimant should report gross wages for the week in which they are earned for the purpose of establishing continuing eligibility for partial unemployment benefits.

REMAND:

The issue of claimant's separation as delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs