

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JANICE C DERFLINGER
Claimant

ALLEN MEMORIAL HOSPITAL
Employer

APPEAL 20A-UI-08641-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Respondent (1R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

On July 22, 2020, the employer filed an appeal from the July 16, 2020, (reference 01) unemployment insurance decision that allowed benefits based on reduced work hours. The parties were properly notified about the hearing. A telephone hearing was held on September 3, 2020. Claimant participated personally and her spouse, Dana Derflinger, observed. Employer participated through human resource business partner Mary Peterson.

ISSUES:

Is the claimant eligible to receive partial benefits?
Is the claimant able to and available for work?
Is the claimant still employed at the same hours and wages?
Is the employer's account subject to charge?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on August 23, 2010. Claimant last worked as a full-time registered nurse. Claimant was separated from employment on January 31, 2020, when employer sold the surgery unit where claimant worked to The Surgery Center at United Medical Park. At that time, claimant had the option to apply for a different position with employer or to apply with The Surgery Center. Claimant applied for employment with The Surgery Center and was hired. Claimant continued in her position until elective surgeries were suspended due to the COVID 19 pandemic and her hours were reduced as a result.

The Benefits Bureau of Iowa Workforce Development has not issued an initial decision on whether claimant should be disqualified from receiving unemployment insurance benefits based on her separation from employment with employer. The Administrative Law Judge was unable to locate a decision from the Tax Bureau of Iowa Workforce Development regarding whether The Surgery Center at United Medical Park, 1731 W Ridgeway Avenue, Waterloo, Iowa 50701,

should be considered a successor employer for purposes of unemployment insurance tax experience rating.

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 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 Admin. Code r. 871-24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) 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.

In this case, claimant has been working reduced hours since the pandemic began. But claimant has been working reduced hours for her new employer—The Surgery Center—not for this employer. Claimant separated from this employer before she ever filed her claim for unemployment insurance benefits. Therefore, the issue is not whether claimant is working reduced hours for this employer. The issue is whether claimant's separation from employment disqualifies her from receiving unemployment insurance benefits and whether employer should be charged for those benefits. Therefore, this case will be remanded for an initial determination on those issues.

DECISION:

The July 16, 2020, (reference 01) unemployment insurance decision allowing benefits is affirmed pending a determination on whether claimant's separation from employment on January 31, 2020, disqualifies her from receiving unemployment insurance benefits and/or whether employer can be relieved of benefit charges based on that separation.

REMAND:

The issue of whether claimant is disqualified from receiving unemployment insurance benefits based on her January 31, 2020, separation from employment is remanded to the Benefits Bureau of Iowa Workforce Development. The issue of whether The Surgery Center at United Medical Park, 1731 W Ridgeway Avenue, Waterloo, Iowa 50701, is a successor of employer and should therefore be liable for benefit charges is remanded to the Tax Bureau of Iowa Workforce Development for an initial determination.



Christine A. Louis
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September 9, 2020
Decision Dated and Mailed

cal/sam