

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUSAN M HART
Claimant

APPEAL NO. 14A-UI-11641-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAREWAY STORES INC
Employer

OC: 10/19/14
Claimant: Respondent (4R)

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 November 6, 2012, reference 01, decision that allowed benefits to the claimant effective October 19 2014 provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on an Agency conclusion that held claimant available for work but partially unemployed. After due notice was issued, a hearing was held on December 2, 2014. Claimant Susan Hart participated. Theresa McLaughlin, Human Resources Manager, represented the employer. The administrative law judge took official notice of the agency's administrative record of wages reported by or for the claimant and benefits disbursed to the claimant (DBRO, WageA and KCCO).

ISSUES:

Whether Ms. Hart has been available for work since establishing her claim for benefits.

Whether Ms. Hart has been partially unemployed since establishing her claim for benefits.

Whether the employer's account may be assessed for benefits paid to the claimant.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Susan Hart commenced her employment with Fareway in 2009 and is employed as a part-time meat market clerk. Ms. Hart's immediate supervisor is John Engle, Meat Market Manager. Ms. Hart established a claim for unemployment insurance benefits that was effective October 19, 2014. Ms. Hart's weekly benefit amount was set at \$237.00. Ms. Hart established her claim under the belief that she was partially unemployed.

Ms. Hart's base period consists of the third and fourth quarter of 2013 and the first and second quarter of 2014. During the third quarter of 2013, Ms. Hart's average weekly wage from Fareway was \$306.00 and the average number of hours worked per week was about 30. During the fourth quarter of 2014, Ms. Hart's average weekly wage was \$304.00, which

corresponded to about 30 average weekly work hours. During the first quarter of 2014, Ms. Hart's average weekly wage was \$296.00, which corresponded to just about 29 average weekly work hours. During the second quarter of 2014, Ms. Hart's average weekly wage was \$343.00, which corresponded to about 34 average weekly work hours. More recently, during the third quarter of 2014, Ms. Hart's average weekly wage was \$325.00, which corresponded to about 32 average weekly hours. Effective September 1, 2014, Ms. Hart's hourly wage has been \$10.75. Ms. Hart's hourly wage for the period of August 12, 2013 through August 31, 2014 was \$10.50. Prior to that, Ms. Hart's hourly wage was \$10.25.

Ms. Hart established her claim for benefits after the employer reduced her work hours and after the employer decided not to allow Ms. Hart to use accrued vacation pay benefits to offset the reduction in work hours. Since Ms. Hart filed her claim for benefits, her work hours and wages have been as follows:

<u>Benefit week end date</u>	<u>Work hours</u>	<u>Fareway wages</u>	<u>Additional Wages</u>
10/25/14	21.7	233.28	100.00
11/1/14	18.8	202.10	
11/8/14	28.1	302.08	
11/15/14	23.7	254.78	
11/22/14	23.8	255.85	
11/29/14	17.4	230.05 (includes 4 hours vacation pay)	

In addition to the wages from Fareway, Ms. Hart also earned \$100.00 in wages from other employment during the benefit week that ended October 25, 2014.

Since Ms. Hart filed her claim for benefits, she has not declined any work that the employer had for her.

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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 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).

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 there have indeed been some weeks since Ms. Hart filed her claim during which she has been partially unemployed. For all of the weeks in question, the employer provided fewer hours to Ms. Hart than she had enjoyed during the base period. Based on that, Ms. Hart would be deemed partially unemployed during any week during which her weekly wages were not more than \$15.00 above her \$237.00 weekly benefit amount, in other words, any week when her wages did not exceed \$252.00. Ms. Hart's total weekly wages for the weeks ending October 25, November 8, November 15, and November 22, 2014 exceeded \$252.00. Accordingly, Ms. Hart was not eligible for benefits under a theory of partial unemployment during those weeks. Ms. Hart's weekly wages for the weeks ending November 1 and November 29, 2014, did not exceed \$252.00. Ms. Hart was eligible for benefits for those two weeks, provided she met all other eligibility requirements.

The weight of the evidence further indicates that Ms. Hart has been able to work and available for work during each week for which she has claimed benefits.

The issue of whether Ms. Hart has been overpaid benefits was not before the administrative law judge. With that in mind, this matter will be remanded to the Benefits Bureau for entry of an overpaid decision concerning the \$65.00 in benefits that Ms. Hart received for the week ending October 25, 2014 and the \$46.00 in benefits that Ms. Hart received for the week ending November 15, 2014.

DECISION:

The November 6, 2012, reference 01, decision is modified as follows. The claimant has been able and available for work since establishing her claim for benefits. The claimant was partially unemployed during the weeks that ended November 1 and November 29, 2014. The claimant is eligible for benefits for those weeks, provided she meets all other eligibility requirements. The claimant was not partially unemployed during the weeks that ended October 25, November 8, November 15, and November 22, 2014. The claimant is not eligible for benefits for those weeks.

The claimant will continue to meet the definition of partial unemployment for each week in which the employer provides fewer work hours than were provided during the base period, so long as the claimant's weekly wages do not exceed her weekly benefit amount by more than \$15.00. The employer's account may be charged for benefits. The claimant is required to report wages from all sources.

This matter is remanded to the Benefits Bureau for entry of an overpaid decision concerning the \$65.00 in benefits that the claimant received for the week ending October 25, 2014 and the \$46.00 in benefits that the claimant received for the week ending November 15, 2014.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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