

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LORENA MARQUEZ DE RAMIREZ
Claimant

APPEAL NO. 20A-UI-08443-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MIDWEST HEALTHCARE LINEN SVC INC
Employer

OC: 03/29/20
Claimant: Respondent (2)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.19(38) – Partial Unemployment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 2, 2020, reference 01, decision that allowed benefits to the claimant effective March 29, 2020, provided the claimant was otherwise eligible, based on the deputy's conclusion that the claimant was able to work and available for work, but that the employer was not providing the same employment at that point as existed earlier in the employment. After due notice was issued, a hearing was held on August 28, 2020. Claimant Lorena Marquez de Ramirez participated. Frank Caruso represented the employer and presented additional testimony. Spanish-English interpreters Francisco Real and Alejandra Caballero of CTS Language Link assisted with the hearing. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, and WAGE-A.

ISSUES:

Whether the claimant was able to work and available for work at the time she established the original claim for benefits that was effective March 29, 2020.

Whether the claimant was temporarily and/or partially unemployed at the time she established the claim for benefits that was effective March 29, 2020.

Whether the employer's account may be charged for benefits for the period that began March 29, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Lorena Marquez de Ramirez is employed by Midwest Healthcare Linen Service, L.L.C. as a full-time laundry production associate. Ms. Marquez de Ramirez usually works a Monday through Friday work week, eight hours per day. Her wage is \$12.33 per hour.

In March 2020, the employer experienced a COVID-19 based decrease in the need for its laundering services. Effective April 2, 2020, the employer reduced Ms. Marquez de Ramirez's work hours to 30 hours per week, six hours per day. This resulted in Ms. Marquez de Ramirez's weekly wages dropping from \$493.20 per week to \$369.90 per week. Effective April 20, 2020, the employer commenced providing supplemental pay equal to two hours' wages per day and

10 hours' to restore Ms. Marquez to her full-time wages. During the period of April 2-17, 2020, the employer did not supplement the pay Ms. Marquez de Ramirez received for the six-hour work day. Ms. Marquez de Ramirez continued to make herself available for the work the employer had for her.

Ms. Marquez de Ramirez established an original claim for benefits that was effective March 29, 2020. Iowa Workforce Development set her weekly benefit amount at \$328.00. Ms. Marquez de Ramirez did not make any weekly claims and did not receive any benefits in connection with the claim that was effective March 29, 2020. Ms. Marquez de Ramirez decided she needed to speak with someone at Iowa Workforce Development by phone. When Ms. Marquez de Ramirez experienced difficulty in getting through to an IWD representative by phone, she abandoned her claim for benefits. Soon thereafter, the employer commenced supplementing the decreased wages and Ms. Marquez de Ramirez decided she no longer needed to pursue benefits.

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 Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

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 96.3(3) provides:

Partial unemployment. An individual who is partially unemployed in any week as defined in section 96.19, subsection 38, paragraph "b", and who meets the conditions of eligibility for benefits shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. The benefits shall be rounded to the lower multiple of one dollar.

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.

Iowa Administrative Code rule 871-24.2.(1)(g) provides as follows:

(g). No continued claim for benefits shall be allowed until the individual claiming benefits has completed a continued claim or claimed benefits as otherwise directed by the department.

Because Ms. Marquez de Ramirez did not make weekly claims for the period beginning March 29, 2020, she did not meet the availability requirement and is not eligible for benefits for the period that began March 29, 2020. There was no need for Ms. Marquez de Ramirez to speak with and IWD representative as a precondition to filing weekly claims. Because Ms. Marquez de Ramirez made not weekly claims, no benefits were disbursed.

Even if Ms. Marquez de Ramirez had commenced making weekly claims after she established the underlying original claim, she could not have been deemed partially unemployment within the meaning of the law because her \$369.90 in weekly wages for the reduced 30 hours of work exceeded her \$328.00 weekly benefit amount by more than \$15.00.

The employer's account has not be charged and is not subject to charge for the period beginning March 29, 2020.

DECISION:

The July 2, 2020, reference 01, is reversed. The claimant did not file weekly claims following the establishment of the March 29, 2020 original claim and therefore did not meet the availability requirements for the period beginning March 29, 2020. The claimant was not partially unemployed within the meaning of the law for the period that began March 29, 2020. Benefits are denied for the period beginning March 29, 2020. The employer's account has not been charged and is not subject to charge for the period beginning March 29, 2020. This decision has no impact on the claimant's eligibility for benefits or the employer's potential liability for benefits in connection with any further additional claim or original claim.



James E. Timberland
Administrative Law Judge

August 31, 2020
Decision Dated and Mailed

jet/scn