

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CARLY BURCHFIELD

Claimant

APPEAL 21A-UI-24521-ED-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DUBUQUE HOLY FAMILY CATHOLIC

Employer

OC: 04/12/20

Claimant: Appellant (2)

Iowa Code § 96.4(3) – Able and Available

Iowa Admin. Code r. 871-24.23(26) – Able & Available – Part time, same hours and wages

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment

Iowa Code § 96.7(2)a – Same Base Period Employment

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 25, 2021, (reference 02) unemployment insurance decision that denied benefits based upon reasonable assurance of continued employment. The parties were properly notified about the hearing. A telephone hearing was held on January 4, 2022. Claimant participated personally. Paul Jahnke participated on behalf of the employer. Claimant's exhibits 1, 2 3, and 4 were offered and admitted into the record. Judicial notice was taken of the administrative record.

ISSUES:

Is the claimant able to work and available for work?

Is claimant employed for the same hours and wages?

Does the claimant meet the definition of being considered partially unemployed?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full time preschool teacher and administrative assistant beginning October 10, 2016. The employer is a child care center that is open year round. Claimants immediate supervisor was Anita Valentine. Claimant was partially laid off of during the COVID-19 pandemic during April and May 2020. Claimant worked 18.56 hours at \$12.6 per hour during the calendar week of May 24, 2020 through May 30, 2020. Claimant received a benefit compensation payment of \$74.30 for the week of May 24, 2020 thorough May 30, 2020. Claimant's weekly benefit amount did not exceed the amount paid. Claimant was able and available for work, however, no work was available for her during that period of time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is partially unemployed effective for the week of May 24, 2020 through May 30, 2020.

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 § 96.19, subsection 38, paragraph "b", subparagraph 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".

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.

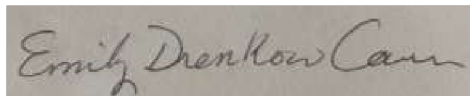
a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

- (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 § 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 § 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 § 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 § 85.33, § 85.34, subsection 1, or § 85A.17, or responsible for paying indemnity insurance benefits.

The claimant is not employed under the same hours and wages as contemplated at hire and she was is not receiving the same employment from the employer that the individual received during the individual's base period, therefore, she is considered partially unemployed for the week of May 24 through May 30, 2020. Benefits may be allowed based upon reporting of weekly earnings.

DECISION:

The January 25, 2021, (reference 02) unemployment insurance decision is reversed. The claimant is partially unemployed and benefits are allowed, provided she is otherwise eligible.



Emily Drenkow Carr
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

February 1, 2022
Decision Dated and Mailed

ed/kmj