

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JULIE A MANLEY
Claimant

APPEAL NO. 14A-UI-09039-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GENESIS HEALTH SYSTEM
Employer

OC: 04/27/14
Claimant: Appellant (4-R)

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:

Julie Manley filed a timely appeal from the August 29, 2014, reference 02, decision that denied benefits effective August 3, 2014, based on an agency conclusion that she was not partially unemployed from Genesis Health System. After due notice was issued, a hearing was held on September 18, 2014. Ms. Manley participated. Angie Kilmer 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).

ISSUES:

Whether Ms. Manley has been able to work and available for work since establishing the additional claim for benefits that was effective August 3, 2014.

Whether Ms. Manley has been partially unemployed since establishing the additional claim for benefits that was effective August 3, 2014.

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: Julie Manley is employed by Genesis Health System as a full-time, 32 hours per week, licensed practical nurse. The employer is Ms. Manley's sole base period employer. Ms. Manley's hourly wage is \$21.31. Ms. Manley is assigned to the first shift, 7:00 a.m. to 3:30 p.m. Ms. Manley usually works four eight-hour shifts to achieve 32 hours of employment each week.

Ms. Manley established an original claim for benefits that was effective April 27, 2014. Ms. Manley's weekly benefit amount is set at \$367.00. Ms. Manley received benefits for only one week, the week that ended May 3, 2014. Ms. Manley continued the original claim through the benefit week that ended June 6, 2014, but did not receive any additional unemployment insurance benefits during that period because her weekly wages exceeded her weekly benefit

amount by more than \$15.00. Indeed, Ms. Manley's normal weekly wages exceed her weekly benefit amount.

Ms. Manley established an additional claim for benefits that was effective August 3, 2014. Ms. Manley established the claim at that time because she lost work hours that week due to low census. In other words, the employer concluded it had more staff on hand than it needed for the number of patients and did not have Ms. Manley work her usual 32 hours per week. During the week of August 3-9, 2014, the employer cancelled Ms. Manley's shifts on August 3, 6, and 7, due to low census. Ms. Manley had requested a vacation day on August 4, 2014, but was otherwise available for her regular work hours that week.

Since Ms. Manley established her additional claim for benefits, she has reported the following weekly wages to Iowa Workforce Development:

<u>Benefit week end date</u>	<u>Wages reported by Ms. Manley</u>
08/09/14	170.00
08/16/14	692.00
08/23/14	721.00
08/30/14	742.00
09/06/14	842.00
09/13/14	765.00

Ms. Manley discontinued her claim for benefits after the benefit week that ended September 13, 2014. The \$170.00 in wages that Ms. Manley reported for the week ending August 9, 2014, derived from Ms. Manley's use of a vacation day.

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 evidence indicates that Ms. Manley was partially unemployed during the week that ended August 9, 2014. During that week the employer eliminated 24 of Ms. Manley's usual 32 work hours. Ms. Manley's weekly wages for that week, based solely on the use of a vacation day, did not exceed her weekly benefit amount plus \$15.00. Indeed the weekly wages for the week were less than half of the \$367.00 weekly benefit amount. Ms. Manley's request for a single day off, did not prevent her from meeting the able and available requirements that week. Ms. Manley is eligible for benefits for the week that ended August 9, 2014, provided she is otherwise eligible. The employer's account may be charged for those benefits. This matter will be remanded to the Benefits Bureau for calculation of the reduced benefit amount that must take into consideration the vacation pay Ms. Manley reported for that week.

Ms. Manley was not partially unemployed during the period of August 10, 2014 through September 13, 2014 and is not eligible for benefits for those weeks. For each of those weeks, Ms. Manley's wages exceeded her weekly benefit amount by more than \$15.00, substantially more.

DECISION:

The claims deputy's August 29, 2014, reference 02, is modified as follows. The claimant was able and available for work, but partially unemployed during the week that ended August 9, 2014. The claimant is eligible for benefits for the week ending August 9, 2014, provided she is otherwise eligible. The employer's account may be charged for the benefits paid to the claimant for that week.

The claimant was not partially unemployed during the period of August 10, 2014 through September 13, 2014 and is not eligible for benefits for those weeks.

This matter is remanded to the Benefits Bureau for calculation of the reduced weekly benefit amount applicable to the benefit week that ended August 9, 2014.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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