

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHAMEKIA M HARSTON

Claimant

APPEAL NO: 10A-UI-15707-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

3801 GRAND ASSOCIATES LP

Employer

OC: 02/07/10

Claimant: Appellant (4/R)

Section 96.19-38-b – Eligibility for Partial Unemployment Insurance Benefits
871 IAC 23.43(4)(a) – Charges for Partial Unemployment Insurance Benefits

STATEMENT OF THE CASE:

Shamekia M. Harston (claimant) appealed a representative's November 12, 2010 decision (reference 04) that concluded she was ineligible to receive partial unemployment insurance benefits because she was working part-time at the same hours and wages as her original contract of hire 3801 Grand Associates, L.P. (employer). Hearing notices were mailed to the parties' last-known addresses of record for a telephone hearing to be held on January 7, 2011. The claimant received the hearing notice and responded by calling the Appeals Section on December 16, 2010. She indicated that she would be available at the scheduled time for the hearing at a specified telephone number. However, when the administrative law judge called that number at the scheduled time for the hearing, the claimant was not available; therefore, she did not participate in the hearing. The employer responded to the hearing notice and indicated that Pete Long would participate as the employer's representative. When the administrative law judge contacted the employer for the hearing, Mr. Long agreed that the administrative law judge should make a determination based upon a review of the available information, including his informal statement. Based on a review of the available information and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant a partially unemployed individual? Is the claimant able and available for work with the employer on the same basis as her initial employment arrangement? Is the employer providing the claimant with the same hours and wages as contemplated in her initial employment arrangement?

FINDINGS OF FACT:

The claimant started working for the employer on September 4, 2009. She works part time as a medical assistant, typically one day one week and two days the next week, plus additional hours she may pick up on a volunteer basis. As of the scheduled date of the hearing, she has remained in the employment with no change in the employment arrangement.

After a separation from another employer, Laboratory Supply Company, on or about February 11, 2009, the claimant established an unemployment insurance benefit year effective February 8, 2009. Her average weekly wage was determined to be \$432.00, indicating that the employment was likely at or close to full-time employment. Her weekly benefit amount was calculated to be \$280.00. She received unemployment insurance benefits, both regular benefits and emergency unemployment compensation (EUC) benefits, through the week ending January 16, 2010. After she began working for the employer in September 2009, she was reporting her weekly wages and receiving partial unemployment benefits until the exhaustion of her eligibility.

The claimant established a second claim year effective February 7, 2010. Her base period was set as being from the fourth quarter 2008 (October 1, 2008) through the third quarter 2009 (September 30, 2009). Her high quarter was the fourth quarter 2008, in which she had \$4,879.00 in wages from a different employer, and no wages from her current employer. Her average weekly wage in that quarter was about \$375.00. Based on those wages, her weekly benefit amount was calculated to be \$243.00.

The claimant began filing weekly claims and receiving full or partial unemployment insurance benefits for weeks after February 7, 2010, reporting her wages earned from the employer. Because of a gap in making weekly claims which began August 29, she was required to reopen her claim by filing an additional claim effective September 19, 2010, causing the Agency to reexamine the claimant's eligibility, resulting in the issuance of the decision concluding she was not eligible to receive unemployment insurance benefits after that date.

The claimant appears to have been pursuing a course of schooling for some other profession. She had been approved for various periods of Department Approved Training (DAT), but her most recently approved period expired August 14, 2010. This expiration may have contributed to the determination reached by the Agency, as without the DAT approval, the claimant would also need to be completing a weekly work search in order to be deemed "able and available" for work. The administrative law judge notes that on the same day the decision in this case was issued, another representative's decision was also issued (reference 05), which concluded that the claimant was required to actively perform a work search. However, that decision does not impose a disqualification per se. Although the decision regarding the work search requirement should likely also have been set up as part of the subject of the appeal in this case, it was not. The administrative law judge cannot determine from the available information whether the claimant in fact began making a work search after being notified of that requirement.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was eligible for partial unemployment insurance benefits effective September 19, 2010.

Iowa Code § 96.3-3 provides:

3. 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.

The claimant filed for benefits because of her separation from her former regular employer; her supplemental employment with the employer does not disqualify her from receiving unemployment insurance benefits. The Agency apparently relied on 871 IAC 24.23(26) in denying benefits to the claimant.

871 IAC 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.

This section does not apply when a claimant is applying for benefits after being separated from her regular employer and the claim is based on those full-time wages. It should only be used when the claimant applies for partial unemployment insurance benefits based on wages from her part-time employer who continues to employ the claimant for the same number of hours and wages as established at the time of hire. Instead, this case is governed by 871 IAC 23.43(4)a, which deals with a situation where an individual has supplemental employment in addition to her regular employment.

871 IAC 23.43(4)a provides in part:

(4) Supplemental employment.

a. An individual, who has been separated with cause attributable to the regular employer and who remains in the employ of the individual's part-time, base period employer, continues to be eligible for benefits as long as the individual is receiving the same employment from the part-time employer that the individual received during the base period. The part-time employer's account, including the reimbursable employer's account, may be relieved of benefit charges....

The fact that the claimant had to reopen her claim because of a period of inactivity does not alter these conclusions. The employer's account is not subject to charge for benefits because the employer is providing the claimant with the same employment as agreed to at the time of hire.

An issue as to whether since September 19, 2010 the claimant has been pursuing a work search or should have been exempt from a work search arose as a consequence of the review of the available information. This issue was not included in the notice of hearing for this case, and the case will be remanded for an investigation and preliminary determination on that issue. 871 IAC 26.14(5).

DECISION:

The unemployment insurance decision dated November 12, 2010 (reference 04) is modified in favor of the claimant. The claimant is eligible for partial unemployment insurance benefits, provided she is otherwise eligible, and the employer's account is exempt from charge for benefits paid to the claimant, as long as she continues to be available for work on the same

basis as originally agreed, and the employer continues to provide the same hours and wage of work as originally agreed, respectively. The matter is remanded to the Claims Section for investigation and determination of the work search issue.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css