

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHRYN M ZIEGLER
Claimant

APPEAL NO. 14A-UI-08525-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

A TO Z CORPORATION
A TO Z DAYCARE & LEARNING CENTER
Employer

OC: 06/22/14
Claimant: Appellant (2)

Iowa Code § 96.19-38-a & b – Total and Partial Unemployment
Iowa Code § 96.7-2-a(2) – Same Base Period Employment
Iowa Admin. Code r. 871-24.22(2)f – Part-Time Worker – Able and Available
Iowa Code § 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated July 24, 2014, reference 01, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on September 5, 2014. Claimant participated personally. Employer participated by Christine York, Executive Director and Jennifer Smith, on Site Director. Exhibits A and One were admitted into evidence

ISSUE:

The issues are whether claimant is still employed at the same hours and wages and partially unemployed. The issue is whether the appeal is timely.

FINDINGS OF FACT:

The claimant currently works for a base period employer, part time under different terms and conditions as contemplated in the original contract of hire. Claimant worked full time prior to going off work for medical care on June 18. Claimant informed employer that she had to go off work for a surgery. Employer took that as a quit and replaced claimant with another worker. Employer put claimant on as on-call and as-needed. Claimant did not have surgery. Claimant resolved her shoulder problem and then went to employer to ask for her job back. Employer had already replaced claimant. The employer then offered claimant on-call work from that point forward. Claimant did not quit but instead went off work to receive medical care.

Claimant filed her appeal late because she did not receive the decision in the mail. Claimant did meet a time deadline based on another decision which confused her as to when to appeal. Claimant acted in good faith in appealing when she did.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is partially unemployed and the employer is not relieved of benefit charges.

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, 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.

An individual shall be deemed partially unemployed in any week in which 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) 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.

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.

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.

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.

Iowa Admin. Code r. 871-23.43(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....

Because the claimant is currently employed part time, claimant is considered partially unemployed. Benefits are allowed. Inasmuch as the current part-time employer is not offering the same wages and hours as in the base period, benefit charges shall be made to its account. Claimant was full time before going out for medical treatment. Upon her return she was placed in an on-call job. This is a change in the contract of hire. Benefits allowed.

Iowa Code § 96.6-2 provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the

administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Claimant's appeal is timely as claimant did not receive the decision. Claimant did meet an appeal time line based on another decision.

DECISION:

The July 24, 2014, reference 01, decision is reversed. The claimant is partially unemployed and benefits are allowed effective June 22, 2014, provided claimant is otherwise eligible. The account of the current part-time employer shall be charged. Claimant's appeal is timely.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/pjs