

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NIKKA A PIVIC
Claimant

APPEAL 18A-UI-06363-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

QHK ENTERPRISES LLC
Employer

**OC: 05/06/18
Claimant: Respondent (2R)**

Iowa Code § 96.4(3) – Able and Available
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Employer chargeability
Iowa Admin. Code r. 871-24.23(16) – Availability

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the May 31, 2018 (reference 02) unemployment insurance decision that found claimant was eligible for unemployment benefits and that the employer's account was not relieved of charges. The parties were properly notified of the hearing. A telephone hearing was held on June 26, 2018. The claimant participated personally. The employer participated through witnesses Husna Khan and Wade Rahman. Employer's Exhibits 1 – 3 were admitted. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUES:

Is the claimant able to work and available for work effective May 6, 2018?
Is the claimant eligible for total or partial unemployment?
Can the employer's account be relieved of charges?
Is claimant employed for the same hours and wages?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant filed her initial claim for benefits with an effective date of May 6, 2018. Her base period includes the first through fourth quarters of 2017. Claimant worked part-time for Hy-Vee during the first and second quarters of 2017 and full-time for Hy-Vee during the third and fourth quarters of 2017. This employer is in the claimant's lag quarter.

Claimant began working for this employer as a full-time personal assistant on December 18, 2017. This employer operates an urgent care medical facility and medical spa. Claimant worked as a personal assistant to Husna Khan, chief executive officer of the company. When she was hired, claimant agreed to work at least 32 hours per week, although her scheduled days of work would change each week. Her work schedule did include occasional weekends.

Schedules were provided to employees approximately one month in advance. As part of her position, claimant was not eligible for paid time off until 90 days after her hire date.

On or about March 29, 2018, claimant came to Ms. Khan to discuss her employment status. Claimant was suffering from personal non-work related medical conditions at the time. Claimant told Ms. Khan that she did not want to be a personal assistant anymore because the job was too stressful. Claimant wanted to continue as a front desk receptionist. Claimant had, on occasion, worked the front desk reception area on an as needed basis when other employees were absent. At this time, the employer was already hiring new full-time employees for front desk reception and claimant was aware of this.

On or about April 5, 2018, claimant was told that she could work front desk reception area on an on-call or as needed basis. Claimant agreed and worked on-call through April 13, 2018. Claimant was offered to work every weekend, but she refused. See Exhibit 3.

After April 13, 2018, the employer had work available for claimant on April 14, 2018; however, the weather was bad and claimant was told by Ms. Khan not to come to work. See Exhibit 3. On April 19, 2018, claimant was told that business was slow and she did not need to come in. However, claimant had already requested not to be scheduled for work on April 17, 2018 and April 19, 2018 because she was scheduled for a doctor's appointment. See Exhibit 3. Ms. Khan offered for claimant to work May 3, 2018 and May 4, 2018 and claimant never responded to her that she would. See Exhibit 3. Claimant continues to be employed by the employer on an as needed or on-call basis but has not physically worked on the job since April 13, 2018.

There has been no initial investigation and determination regarding whether claimant had a disqualifying separation from employment on March 20, 2018 due to her request to change from full-time employee to on-call status, with knowledge that the request would likely result in a reduction of work with the employer. The question of whether the claimant had a disqualifying separation from employment on March 29, 2018 will be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

There has been no initial investigation and determination regarding whether claimant is overpaid unemployment insurance benefits. The question of whether the claimant is overpaid benefits will be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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 section 96.19, subsection 38, paragraph "b", subparagraph (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 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.

Iowa Admin. Code r. 871-24.22(2)i(1) provides:

Benefit 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.

i. On-call workers.

(1) Substitute workers (i.e., post office clerks, railroad extra board workers), who hold themselves available for one employer and who do not accept other work, are not available for work within the meaning of the law and are not eligible for benefits.

Iowa Admin. Code r. 871-24.23(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.

Iowa Admin. Code r. 871-24.23(16) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

In this case, the claimant reduced her hours voluntarily by requesting to go to an on-call or as needed basis, working only as a front desk receptionist. Claimant did this knowing that the employer had already hired full-time employees and this change in employment status would undoubtedly result in a reduction of her hours worked. Claimant's unilateral decision in limiting her own hours because she was not willing to work during the hours in which suitable work for the claimant was available means that she is not available for work pursuant to Iowa law. Benefits are denied effective May 6, 2018.

DECISION:

The May 31, 2018 (reference 02) decision is reversed. Claimant is not available for work and benefits are denied effective May 6, 2018.

REMAND: The separation issue delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

REMAND: The overpayment of benefits issue delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs