

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LUCY VELASCO

Claimant

APPEAL 21A-UI-09126-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WILDCAT INVESTMENTS LLC

Employer

OC: 03/15/20

Claimant: Respondent (4)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

The employer/appellant, Wildcat Investments LLC., filed an appeal from the March 19, 2021 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on June 16, 2021. The claimant, Lucy Velasco, participated. The employer participated through Quentin Hurst, co-owner.

The administrative law judge took official notice of the administrative records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant totally, partially, or temporarily unemployed effective June 14, 2020?

Is the claimant able to and available for work?

Is the claimant still employed at the same hours and wages?

Is the employer’s account subject to charge?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Employer operates Sports Clips franchises. Claimant has worked part-time as a stylist since December 5, 2018. Claimant stays home full-time with her children and works generally Saturdays, Sundays and some Mondays. When claimant was hired, she was not guaranteed a set number of hours each week and she agreed to that arrangement. Claimant works on average 11-12 hours per week and earns a minimum of \$14.00 per hour but often earns \$21.00 to 23.00 per hour.

Claimant made weekly continued claims for unemployment insurance benefits each week between June 14, 2020 and October 17, 2020. Employer was open during this time. Claimant’s hours fluctuated based upon employer staffing needs and social distancing. Employer gave

priority of shifts to full-time employees. Claimant worked each week, except the weeks ending July 18, August 8, September 12 and October 17, 2020. For these four weeks, no work was offered to claimant and she earned no wages.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge modifies the initial decision in favor of the employer/appellant.

Iowa Code § 96.19(38)b provides:

As used in this chapter, unless the context clearly requires otherwise:

38. "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 section 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 section 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 section 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 section 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 section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

For an individual to be eligible to receive benefits, she must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code § 96.4(3). The burden is on the claimant to establish that she is able and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22.

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.

For the weeks ending July 18, August 8, September 12 and October 17, 2020: Claimant was totally unemployed as she did not perform any work or earn wages. Claimant did not perform work because employer allocated her shifts to full-time employees. For each of these weeks, claimant is eligible for benefits, provided she meets all other requirements. For whatever period the employer is not offering the same wages and hours as contemplated in the contract or terms of hire, it may be liable for benefit charges to its account.

For all other weeks between June 14, 2020 and October 17, 2020: Claimant is not eligible for benefits. Because claimant was hired to work only part-time hours and was not guaranteed a certain number of shifts or hours, the claimant is not considered to be unemployed within the meaning of the law. Claimant at the time of hire was made aware that her hours would fluctuate based upon business needs and her availability. Thus, since the employer provided regular part-time hours each week (excluding July 18, August 8, September 12 and October 17, 2020), claimant remained employed under the same hours and wages as contemplated at hire. Therefore, she is not considered partially unemployed. Benefits are denied.

DECISION:

The unemployment insurance decision dated March 19, 2021, (reference 01) is modified in favor of the employer/appellant.

The claimant was totally unemployed for the weeks ending July 18, August 8, September 12 and October 17, 2020. Benefits are allowed, provided she is otherwise eligible. Employer may be charged for benefits.

Claimant is not eligible for benefits for all other weeks June 14, 2020 and October 17, 2020. Claimant does not meet the definition of unemployed as she was a part-time employee working under the same hours and conditions for which she was hired. Regular unemployment insurance benefits funded by the state of Iowa are denied until such time the claimant is able to and available for work.



Jennifer L. Beckman
Administrative Law Judge
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June 29, 2021
Decision Dated and Mailed

jlb/ol

NOTE TO CLAIMANT: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are unemployed or continue to be unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits. **ATTENTION:** On May 11, 2021, Governor Reynolds announced that Iowa will end its participation in federal pandemic-related unemployment benefit programs effective June 12, 2021. The last payable week for PUA in Iowa will be the week ending June 12, 2021. Additional information can be found in the press release at <https://www.iowaworkforcedevelopment.gov/iowa-end-participation-federal-unemployment-benefit-programs-citing-strong-labor-market-and>. You may find information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>