

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DEBRA A MILLER
Claimant

APPEAL 17A-UI-03174-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA FALLS COMMUNITY SCHOOL DIST
Employer

**OC: 02/26/17
Claimant: Respondent (2R)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.19(38) b – Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

The employer filed an appeal from the March 15, 2017, (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on April 14, 2017. The claimant participated and testified. The employer participated through Superintendent John Robbins.

ISSUES:

Is the claimant partially unemployed and is she able to and available for work?
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: Claimant is employed part time as a food service worker. Claimant was hired on April 5, 2010 to work six and a half hours each day, or 32.5 hours per week, Monday through Friday, during the school year. Claimant's current hourly rate is \$10.44. Claimant's hours have remained the same throughout her employment and her only change in wages has been regular pay increases. Claimant also holds another part-time job with a different employer. Claimant's hours were reduced with that employer from 15 hours per week to only six sometime in February 2017. Claimant is currently working six hours a week with her other employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to and available for work.

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", unnumbered paragraph (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 Admin. Code r. 871-24.23(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

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.

The claimant was working a total of 38.5 hours a week during the time she claimed benefits. Though claimant's hours at her other part-time job may have been reduced, she was, and still is, working to the extent that she cannot be considered able to and available for work. Additionally, the claimant was not partially unemployed during each of those weeks as she worked over 32.5 hours each week for this employer, hours which she had always worked, and was still working another six hours for the other employer. Accordingly, benefits are denied. Even if the claimant were partially unemployed and able and available for work, the account of this employer (account number 102224-000) should not be charged, as she is receiving the same employment from this employer as she always has.

There was information provided during the hearing which indicates claimant's wages, specifically her wages from this employer, for the three week period beginning February 26, 2017 and ending March 18, 2017, may not have been properly reported. This issue is remanded to the benefits bureau for initial investigation and determination, as is the issue of possible overpayment of benefits.

DECISION:

The March 15, 2017, (reference 02) unemployment insurance decision is reversed. The claimant is not able to work and available for work effective February 26, 2017. Benefits are denied.

REMAND:

The issues of the reason for the separation and whether the claimant has been overpaid benefits and whether her wages were properly reported for the three-week period beginning February 26, 2017 and ending March 18, 2017 are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

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