

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KATELYNN A DURBIN

Claimant

MIDWEST PROFESSIONAL STAFFING LLC

Employer

APPEAL 19A-UI-06738-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/23/18

Claimant: Respondent (2)

Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search
Iowa Code § 96.19(38)B – Definition – Partial employment
Iowa Code § 96.7(2)A(2) – Charges – Same base period employment
Iowa Admin. Code r. 871-24.23(26) – Eligibility – Part-time same hours, wages

STATEMENT OF THE CASE:

Employer/appellant filed an appeal from the August 15, 2019 (reference 07) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on September 18, 2019, at 9:00 a.m. Claimant did not participate. Employer participated through Liz Wilkinson, Office Manager. Keelie Fisher, Staffing Manager, was a witness for employer. Employer's Exhibits 1 & 2 were admitted. Official notice was taken of the administrative record

ISSUES:

Whether claimant was able to and available for work.
Whether claimant was eligible to receive partial benefits.
Whether claimant was employed at the same wage and hours.
Whether employer's account is subject to charge.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began her employment with Midwest Professional Staffing LLC, a temporary employment firm, on April 30, 2019. Claimant had only one placement during her employment. Claimant was placed with Iowa Realty on April 30, 2019 and worked as a receptionist until her employment ended on August 23, 2019.

When claimant began her placement at Iowa Realty, her schedule was Monday through Friday from 8:00 a.m. until 5:00 p.m. Claimant was allowed to work up to 40 hours per week. Claimant was offered a full-time position by Iowa Realty, but declined. Iowa Realty filled the position with someone else and moved claimant to a different Iowa Realty office where she was allowed to work up to 32.5 hours per week. While claimant was at the first office and able to work up to 40 hours per week, she averaged 33.44 hours per week. While claimant was at the second office and was able to work up to 32.5 hours per week, she worked 31.03 hours per week.

Claimant worked less than the hours allowed of her own choosing. Claimant's hourly wage was \$18.00 per hour.

Claimant opened her claim for benefits effective December 23, 2018 and filed an additional claim effective July 28, 2019. Claimant's weekly benefit amount is \$485.00. Claimant filed a weekly continued claim for the week ending August 3, 2019, during which she worked 32.22 hours at Iowa Realty and earned \$580.00. Claimant reported \$517.00 of earnings to Iowa Workforce Development for that week. Claimant filed a claim for a claim for the week ending August 10, 2019, during which she worked 27.17 hours at Iowa Realty and earned \$489.00. Claimant reported \$488.00 of earnings to Iowa Workforce Development for that week. Claimant filed a claim for the week ending August 17, 2019, during which she worked 32.5 hours at Iowa Realty and earned \$585.00. Claimant reported these earnings to Iowa Workforce Development.

On July 29, 2019, claimant notified employer that she was quitting her job because she found new employment and that her last day would be August 16, 2019. On August 9, 2019, claimant notified employer that her last day would be August 23, 2019 – not August 16, 2019. Claimant provided no other reason for her resignation than that she was starting other employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that claimant is not partially or totally unemployed. The issues of ability to and availability for work, whether claimant was employed at the same wage and hours and chargeability of the employer's account are moot. Benefits are denied.

Iowa Code § 96.2 provides (with emphasis added):

As a guide to the interpretation and application of this chapter, the public policy of this state is declared to be as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. *Involuntary* employment is therefore a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and the worker's family. The achievement of social security requires protection against this greatest hazard of our economic life. This can be provided by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The legislature, therefore, declares that in its considered judgment the public good and the general welfare of the citizens of this state require the enactment of this measure, under the police powers of the state, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons *unemployed through no fault of their own*.

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 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.

Under Iowa Employment Security Law, an individual must be totally or partially unemployed to be eligible for benefits. Iowa Code § 96.19(38). Total unemployment is when someone has received no wages and performed no services during any given week. *Id.* In this case, claimant has performed services and earned wages for each week she has claimed benefits. Claimant is not totally unemployed.

The next question is whether claimant is partially unemployed. In order to be partially unemployed, an individual must be laid off from full-time employment or working less than his or her regular full-time work week. *Id.* For the weeks ending August 3, 2019 and August 17, 2019, claimant was employed at her then regular job and worked less than her regular full-time week, but earned more than her weekly benefit amount plus fifteen dollars. Therefore, the claimant is not considered unemployed and is not eligible for benefits for the weeks ending August 3, 2019 and August 17, 2019.

For the week ending August 10, 2019, claimant was employed at her then regular job, worked less than her regular full-time week, and earned less than her weekly benefit amount plus fifteen dollars. However, the legislature's guide to interpreting and applying the employment security – unemployment compensation chapter of the Iowa Code clearly states that unemployment compensation is intended for periods of "involuntary unemployment," when people are

“unemployed through no fault of their own.” See § 96.2. Claimant chose not to work the regular full-time week for the week ending August 10, 2019; claimant’s unemployment was voluntary and, thus, claimant is not eligible for benefits for the week ending August 10, 2019.

Because claimant is not eligible for benefits, the issues of ability to and availability for work, whether claimant was employed at the same wage and hours, and chargeability are moot.

DECISION:

The August 15, 2019 (reference 07) unemployment insurance decision is reversed. Claimant was not totally or partially unemployed through no fault of her own during the relevant weeks. Benefits are denied. The issues of ability to and availability for work, whether claimant was employed at the same wage and hours, and chargeability are moot.

Adrienne C. Williamson
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Decision Dated and Mailed

acw/rvs