

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SAMANTHA J EHLER
Claimant

WALMART ASSOCIATES
Employer

APPEAL 22A-UI-03658-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/19/21
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages
Iowa Code § 96.1A(37) – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

Samantha J Ehlers, the claimant/appellant, filed an appeal from the January 21, 2022 (reference 01) unemployment insurance (UI) decision that denied benefits as of December 19, 2021 because Ms. Ehlers was still employed in her job for the same hours and wages as in her original contract of hire. The parties were properly notified about the hearing. A telephone hearing was held on March 10, 2022. Ms. Ehlers participated personally. The employer did not participate in the hearing. The administrative law judge took official notice of the administrative record.

ISSUES:

Is Ms. Ehlers able to and available for work?
Is Ms. Ehlers temporarily or partially unemployed?
If so, is the employer's account subject to charge?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Ehlers began working for the employer on June 25, 2012. At the time she filed her claim, Ms. Ehlers worked as a part-time service technician. The employer did not guarantee Ms. Ehlers hours, but she usually worked about 32 hours per week. The employer paid her \$19.23 per hour.

The week of December 19-25, 2021, the employer did not schedule Ms. Ehlers for any hours. The employer did not give Ms. Ehlers a reason for why they reduced her hours that week. Ms. Ehlers used paid-time-off (PTO) for that week. The next two weeks the employer scheduled Ms. Ehlers for 24 hours. Ms. Ehlers filed a weekly continued claim for the week of December 26, 2021 through January 1, 2022 and reported \$462.00 in wages. Ms. Ehlers returned to her usual hours the following week. Ms. Ehlers' UI weekly benefit amount is \$396.00.

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 96.1A, subsection 37, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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 § 96.1A(37) 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 Admin. Code r. 871-24.23(26) provide:

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 Code section 96.7(2)a(2)(a) 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.

In this case, Ms. Ehlers was continuously employed with the employer for the same hours and wages as in her original contract of hire. Although the employer did not schedule her for any hours the week of December 19-25, 2021, Ms. Ehlers used PTO that week. The employer paid Ms. Ehlers for 24 hours of PTO, which is more than her weekly benefit amount plus \$15.00. The following week, Ms. Ehlers worked, and the employer paid her more than her weekly benefit amount plus \$15.00. Since Ms. Ehlers was continuously employed with the employer for the same hours and wages as in her original contract of hire, benefits are denied

DECISION:

The January 21, 2022 (reference 01) decision is AFFIRMED. As of December 19, 2021, Ms. Archer was still employed in her job with this employer at same hours and wages as in her original contract of hire. Benefits are DENIED.



Daniel Zeno
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March 28, 2022
Decision Dated and Mailed

dz/mh