

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**KATHY M ELY**  
Claimant

**APPEAL NO: 15A-UI-03789-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TA OPERATING LLC  
TRAVEL CENTERS OF AMERICA**  
Employer

**OC: 02/15/15  
Claimant: Appellant (4)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Kathy Ely (claimant) appealed a representative's March 19, 2015, decision (reference 02) that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with TA Operating (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 29, 2015. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing.

**ISSUE:**

The issue is whether the claimant is able and available for work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired in April 2014, as a part-time prep cook. She was also working full-time at Sig Manufacturing. On February 5, 2015, the claimant was separated from work at Sig Manufacturing. The claimant filed a claim for unemployment insurance benefits with an effective date of February 15, 2015. This employer increased her hours.

The claimant's base period of employment is from the last quarter of 2013 through the third quarter of 2014. The claimant has full-time wages from Sig Manufacturing and part-time wages from TA Operating. During her highest quarter of her base period, the claimant earned \$8,773.00 and worked approximately 67 hours per week. The claimant is now working approximately 37 hours per week.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant is partially unemployed and the employer is relieved of benefit charges.

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, 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.

An individual shall be deemed partially unemployed in any week in which 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) 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.

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.

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.

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. 871-23.43(4)a provides in part:

(4) Supplemental employment.

a. An individual, who has been separated with cause attributable to the regular employer and who remains in the employ of the individual's part-time, base period employer, continues to be eligible for benefits as long as the individual is receiving the same employment from the part-time employer that the individual received during the base period. The part-time employer's account, including the reimbursable employer's account, may be relieved of benefit charges....

Because the claimant has other base-period wages and is currently employed about half of the hours she was working during her highest quarter of her base period, she is considered partially unemployed. Benefits are allowed. Inasmuch as the current part-time employer is offering the same wages and hours as in the base period, no benefit charges shall be made to its account.

**DECISION:**

The representative's March 19, 2015, decision (reference 02) is modified in favor of the appellant. The claimant is partially unemployed and benefits are allowed, provided she is otherwise eligible. The account of the current part-time employer shall not be charged.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs