

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DAWNE HAMMES**  
Claimant

**APPEAL 21A-UI-01147-DZ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LINN COUNTY EYE CARE PLC**  
Employer

**OC: 04/05/20  
Claimant: Respondent (1)**

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Iowa Code § 96.19(38) – Total and Partial Unemployment  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment  
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 § 96.3(7) – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

Linn County Eye Care PLC, the employer/appellant, filed an appeal from the December 1, 2020, (reference 02) unemployment insurance decision that concluded Ms. Hammes was eligible for unemployment insurance benefits. The parties were properly notified about the hearing. A telephone hearing was held on February 16, 2021. The employer participated through Sara Weist, office administrator. Ms. Hammes participated and testified. Claimant's Exhibit 1 was admitted into evidence. Official notice was taken of the administrative record.

**ISSUES:**

Is Ms. Hammes temporarily unemployed or able to and available for work?  
Is Ms. Hammes still employed at the same hours and wages?  
Is the employer's account subject to charge?  
Is Ms. Hammes overpaid benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Hammes works as a full-time optician at the employer's Cedar Rapids location.

On August 8, 2020 a derecho storm hit Cedar Rapids. Ms. Hammes worked on August 10. The employer closed three of its four locations, including the Cedar Rapids location, due to the storm. The employer reopened its Robins location only on August 13. The employer offered employees, including Ms. Hammes, the option to work four hour shifts at the Robins location on August 13, 14 and 15. The employer told employees, including Ms. Hammes, that they could either take paid time off for the time they were not working or not be paid at all.

Ms. Hammes' manager sent her text message on August 13 asking if she would like to work a four hour shift at the Robins location. Due to the storm, Ms. Hammes did not receive the

message until after the scheduled four hour shift. Ms. Hammes told her manager this and offered to work a four shift on August 14. Ms. Hammes' manager told her that the Friday shifts had already been covered by other employees.

Ms. Hammes returned to work on August 17.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that Ms. Hammes is temporarily unemployed from August 11, 2020 through August 15, 2020 and this employer is not relieved of benefit charges.

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.

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.

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.

Ms. Hammes is temporarily unemployed. Ms. Hammes was unemployed from her full-time job from August 11, 2020 through August 15, 2020 due to the employer closing and she returned to her full-time job at her same wages and hours. Ms. Hammes has no other base-period wages. Partial benefits are allowed as long as she is otherwise eligible.

The employer was not offering the same wages and hours as in the base period contemplated at hire. From August 11, 2020 through August 15, 2020, the employer was not offering the same hours to Ms. Hammes. Benefit charges shall be made to its account.

**DECISION:**

The December 1, 2020, (reference 02) unemployment insurance decision is affirmed. Ms. Hammes was temporarily unemployed from August 11, 2020 through August 15, 2020. Benefits are allowed, provided Ms. Hammes is otherwise eligible. Charges shall be made to the employer's account.



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February 26, 2021  
Decision Dated and Mailed

dz/kmj