

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERESA R HAUDER
Claimant

APPEAL NO. 14A-UI-04782-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COVENANT BIBLE CHURCH
Employer

**OC: 11/16/14
Claimant: Appellant (4)**

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.4(3) – Still Employed Same Hours and Wages
Iowa Code Section 96.7(2) – Employer Liability

STATEMENT OF THE CASE:

Teresa Hauder filed a timely appeal from the April 16, 2015, reference 03, decision that denied benefits effective March 1, 2015, based on an Agency conclusion that she was not partially unemployed. After due notice was issued, a hearing was held on June 1, 2015. Ms. Hauder participated. Linda Hochstedler represented the employer. The administrative law judge took official notice of the agency's administrative record of wages reported by or for the claimant and benefits disbursed to the claimant (DBRO). The administrative law judge took official notice of the November 12, 2014, reference 01, decision that allowed benefits to the claimant provided she was otherwise eligible based on her November 12, 2014 separation from employer Discovery Living, Inc.

ISSUES:

Whether the claimant has been able to work and available for work since establishing her claim for benefits.

Whether the claimant has been partially unemployed since establishing her claim for benefits.

Whether the employer's account may be assessed for benefits paid to the claimant.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Teresa Hauder commenced her employment with Covenant Bible Church in 2008 and last performed work for that employer on May 31, 2015. While she was employed she averaged about 20 hours per week as a part-time custodian. Her wage since June 2014 was \$11.11 per hour. The employer did not decrease the number of hours available to Ms. Hauder or reduce her wage.

In 2012, Ms. Hauder had commenced part-time employment with Discovery Living, Inc. Ms. Hauder was able to create a full-time work schedule for herself through the two part-time employments. Ms. Hauder was discharged from Discovery Living on November 12, 2014.

In response to the discharge from Discovery Living, Ms. Hauder established a claim for unemployment insurance benefits that was effective November 16, 2014. Ms. Hauder's weekly benefit amount was set at \$198.00. Ms. Hauder made weekly claims for benefits for the period of November 16, 2014 through February 7, 2015. Ms. Hauder reported her wages from Covenant Bible Church when she made her weekly claims for benefits. For the period of December 7, 2014 through February 7, 2015, Ms. Hauder received unemployment insurance benefits based on partial unemployment relative to her base period wages and employment.

In February 2015, there was break in Ms. Hauder's claim reporting and in her claim. The break occurred in connection with Covenant Bible Church having additional hours during a particular week and Ms. Hauder's conclusion that she would not be eligible for benefits for that week.

The claim recommenced effective March 1, 2015. Thereafter, Ms. Hauder continued to report her weekly wages from Covenant Bible Church when she made her weekly claims. Ms. Hauder continued to engage in a search for new employment. Ms. Hauder did not receive any additional unemployment insurance benefits. Ms. Hauder discontinued her claim after the week that ended April 25, 2015. Thus, the period in question is the period of March 1, 2015 through April 25, 2015. For the period in question, Ms. Hauder consistently has wages that were less than her \$198.00 weekly benefit amount.

Ms. Hauder's base period for purposes of the claim year that started on November 16, 2014 consists of the third and fourth quarters of 2013 and the first and second quarters of 2014. Ms. Hauder's base period wage credits are based entirely on her employment with Discovery Living, Inc. This is because Covenant Bible Church is a church, Ms. Hauder was a church employee, and the employment was not insured work for unemployment insurance purposes.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

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. Iowa Code section 96.19(38)(b).

Iowa Code section 96.7(1) and (2) provides, in relevant part, as follows:

Employer contributions and reimbursements.

1. Payment. Contributions accrue and are payable, in accordance with rules adopted by the department, on all taxable wages paid by an employer for insured work.

2. Contribution rates based on benefit experience.

a. (1) The department shall maintain a separate account for each employer and shall credit each employer's account with all contributions which the employer has paid or which have been paid on the employer's behalf.

(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.

[Emphasis added.]

Ms. Hauder was not partially unemployed from Covenant Bible Church March 1, 2015 through April 25, 2015. Accordingly, that employer's account, if any, will be charged for benefits paid to Ms. Hauder for the period in question. But that is not the end of the story.

871 IAC 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....

Ms. Hauder's decision to continue in the part-time supplemental employment at Covenant Bible Church after her separation from Discovery Living, Inc., does not prevent her from meeting the availability requirement and being eligible for benefits provided she meets all other eligibility requirements. This is because Ms. Hauder's base period wage credits are based on a history of working essentially full-time hours. During the period of March 1, 2015 through April 25, 2015, Ms. Hauder was available for the equivalent of full-time employment similar to what she had experienced during her base period, but she did not have the equivalent of full-time work. Ms. Hauder was able to work and available for work during the period of March 1, 2015 through

April 25, 2015. Ms. Hauder is eligible for benefits for that period, provided she is otherwise eligible.

DECISION:

The April 16, 2015, reference 03, decision is modified as follows. The claimant was not partially unemployed from her non-covered, part-time supplemental employment with Covenant Bible Church during the period of March 1, 2015 through April 25, 2015. That employer will not be charged for benefits paid to the claimant for that period. The claimant did meet the work availability requirement and was eligible for benefits for the period of March 1, 2015 through April 25, 2015, based on her wage credits from Discovery Living, Inc., provided she was otherwise eligible.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css