

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SALLY S THOMPSON
Claimant

SUNSET KNOLL INC
Employer

APPEAL 17A-UI-04926-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/05/16
Claimant: Respondent (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a – Same Base Period Employment

STATEMENT OF THE CASE:

The employer filed an appeal from the May 4, 2017, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 25, 2017. Claimant participated. Employer participated through administrative consultant Penny Moellers and interim administrator Nicole Bond.

ISSUES:

Does the claimant meet the definition of being considered partially unemployed?
Is the claimant able to and available for work?
Is the employer's account subject to charge?

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: The claimant was hired on January 23, 2017, to work full-time as a social services and admissions/marketing employee. When claimant was hired, she informed the administrator she had a back injury and was permanently restricted from lifting more than ten pounds. The administrator assured claimant it would not be a problem in her position.

On April 20, 2017, administrative consultant Penny Moellers informed claimant her hours as a social services and admissions/marketing employee would be cut to 16 hours per week. Moellers offered claimant the position of activities director working 24 hours per week. The position requires moving tables and chairs. When claimant filled in as activities director on March 20, 2017, she had very little help moving the tables and chairs and was in great pain at the end of the day because of it. Claimant stated she did not believe she would be able to perform the position of activities director due to her back problems. Moellers stated she was sure other employees would help claimant move the tables and chairs. Claimant told Moellers she would consider the offer.

On April 27, 2017, claimant was required to fill in as activities director. The tables and chairs needed to be moved for community coffee hour. Claimant could not find employees to help her move the tables and chairs in a timely manner and ended up doing the work herself. The same day, claimant informed Moellers she would not be able to physically perform in the position.

Since April 23, 2017, claimant has been working 16 hours per week.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is partially unemployed effective April 23, 2017.

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.

Because the claimant is working less than the regular full-time week and is earning less than her individual weekly benefit amount plus fifteen dollars, she is considered partially unemployed effective April 23, 2017.

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".

Claimant is available for work in the same capacity she was at the time of hire. Claimant informed employer of her physical restrictions at the time of hire and was informed it would not be a problem. Claimant is not obligated to accept work beyond her physical limitations that were clearly communicated to employer. Claimant's hours have been reduced through no fault of her own, and she is considered able to and available for work.

Benefits may be allowed based upon reporting of weekly earnings. Because employer is a not a base period employer, its account will not be charged for benefits claimant receives during the June 5, 2016, claim year.

DECISION:

The May 4, 2017, (reference 01) unemployment insurance decision is affirmed. The claimant is partially unemployed and benefits are allowed, provided claimant is otherwise eligible. She is required to report gross wages earned for each week of benefits claimed. The employer is not a base period employer. Therefore, its account will not be charged for benefits attributable to the June 5, 2016, claim year.

Christine A. Louis
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Decision Dated and Mailed

cal/scn