

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KARA L DONALDSON
Claimant

APPEAL 22A-UI-07520-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMFORT CARE MEDICARE INC
Employer

**OC: 02/20/22
Claimant: Appellant (1)**

Iowa Code § 96.4(3) - Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) - Part-Time Same Hours, 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:

Claimant/appellant, Kara Donaldson, appealed from the March 18, 2022, (reference 03) unemployment insurance decision that denied benefits as of 02/20/22, finding she was still employed for the same hours and wages as original contract of hire and therefore not partially unemployed. After proper notice, a telephone hearing was conducted on May 10, 2022. Claimant participated personally. Employer, Comfort Care Medicare, Inc., participated through Lindesay Burton, director of human resources and party representative, and Jackie Smith, office manager. Judicial notice was taken of the administrative records.

ISSUES:

Is the claimant able to and available for work?
Is claimant employed for the same hours and wages?
Is the claimant totally, partially, or temporarily unemployed?
Is employer chargeable for benefits?

FINDINGS OF FACT:

Having heard the testimony and reviewed the evidence and record, the undersigned finds:

Claimant was employed part-time as a home health aide with a set schedule. The parties agree that claimant was never laid off, discharged, or quit work. Claimant did not lose any hours and is working approximately four hours more a week than when she filed her claim.

Claimant is able and available to work. Claimant is currently employed at the same wages and is generally employed at the same hours or slightly more per week as she was working prior.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to and available to work. Claimant is still employed at the same hours and wages, and as such, claimant is not totally or partially unemployed. The employer's account is not subject to charge.

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 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 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 Admin. Code r. 871-24.22(2)h provides:

Available for part of week. Each case must be decided on its own merits. Generally, if the individual is available for the major portion of the workweek, the individual is considered to be available for work.

Claimant is a currently working generally the same hours as before or more and is getting the same wages (or slightly more).

Iowa Code section 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 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.

Because claimant continues to be employed at the same hours and wages, she is not eligible for benefits. Because she is not eligible for benefits, employer is not liable for benefit charges.

DECISION:

The March 18, 2022, (reference 03) decision that denied benefits is **AFFIRMED**.



Darrin T. Hamilton
Administrative Law Judge

June 17, 2022
Decision Dated and Mailed

dh/mh