

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DEBORAH PINES
Claimant

% **VERIDIAN CCO**
DANIEL CARR
Employer

APPEAL 18A-UI-06315-DL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/06/18
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2)f – Availability for Work - Part-time Worker/Student
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 30, 2018, (reference 02), unemployment insurance decision that denied benefits based upon not being partially unemployed. After due notice was issued, a telephone conference hearing was held on June 25, 2018. Claimant participated with Melissa Herold, who also acted as her representative. Employer did not respond to the hearing notice instruction by registering for the hearing and did not participate. The administrative law judge took official notice of the administrative record, including fact-finding documents, base period wages dating to the 2015 claim year, and benefit payment records.

ISSUES:

Is the claimant partially unemployed and available for work effective May 6, 2018?
Does the claimant meet the definition of being considered partially unemployed?
If so, is the employer's account liable for potential charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant is employed as a respite-care provider. She was hired in 2010 by parents of the children, Susan Pines-Howard (sister of claimant) and stepfather Harold Howard to work 30 to 35 hours per week, Monday through Friday, six to seven hours per day. In 2015, that arrangement changed and her hours were reduced with no guarantee of a minimum number of hours per week. Her work hours are scheduled depending on what Susan Pines-Howard schedules. Claimant no longer provides care for Tyreece, who has not been at home since October 2017. Claimant cares for Noah, Daniel, Olivia, Jace, and Lukas. Olivia has not been at home since approximately June 11, 2018. Her rate of pay depends upon whether she watches the child alone or as part of a group of siblings.

Claimant's niece and coworker Melissa Herold is the daughter of Susan Pines-Howard and sister of the children. Her unemployment insurance original claim (OC) date is May 6, 2018. Her claim base period runs from the first through fourth quarters of 2017. The lag quarter, not counted in calculating maximum or weekly benefit amounts (MBA, WBA), is the first quarter of 2018. She has no other employers in the base period.

Her average quarterly wages from Daniel increased from \$1157.50 in 2017, to \$1548.00 in 2018. Her average quarterly wages from Jace increased from \$1080.27 in 2017, to \$1484.00 in 2018. Her average quarterly wages from Olivia decreased from \$311.50 in 2017, to \$142.00 in 2018. Even with the decrease in average quarterly wages, the administrative record reflects that she is not monetarily eligible for benefits based upon this employer's wages. Her average quarterly wages from Tyreece decreased from \$770.38 in 2017, to zero in 2018. Even with the decrease in average quarterly wages and the separation from this employer, the administrative record shows that she is not monetarily eligible for benefits based upon this employer's wages. Her average quarterly wages from Noah increased from \$103.50 in 2017, to \$502.00 in 2018. Her average quarterly wages from Lukas increased from \$109.68 in 2017, to \$160.00 in 2018.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not partially unemployed.

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. 871-24.22(2)f provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

f. Part-time worker, student--other. Part-time worker shall mean any individual who has been in the employ of an employing unit and has established a pattern of part-time regular employment which is subject to the employment security tax, and has accrued wage credits while working in a part-time job. If such part-time worker becomes separated from this employment for no disqualifiable reason, and providing such worker has reasonable expectation of securing other employment for the same number of hours worked, no disqualification shall be imposed under Iowa Code section 96.4(3). In other words, if an individual is available to the same degree and to the same extent as when the wage credits were accrued, the individual meets the eligibility requirements of the law.

Iowa Code section 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 Code section 96.7(2)a(2)(a), (b), and (c) 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.

(b) 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 section 96.8, subsection 5.

(c) 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 section 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 section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

While an individual may be considered partially unemployed with part-time base-period wages, the reduction in hours took place in 2015, when claimant went from working a set schedule of

30 to 35 hours per week, to a reduction in hours without a set schedule. Since that time, claimant has had two more benefit years with attendant base periods that do not include 2015 or earlier wages. The issue is determined by comparing claimant's current employment with the base period wage history for the current claim year. Claimant argues that the range of working hours were reduced to between 10 and 20 hours per week over the past year. With the exception of Tyreece and Olivia, her average quarterly wages have increased from 2017 to 2018. Thus, she has not established she is partially unemployed with respect to Daniel, Jace, Noah, or Lukas. Since each child is considered a separate employer, she is not monetarily eligible for benefits from Tyreece or Olivia based upon the separations from employment in October 2017, and June 2018, respectively. For the sake of argument, even if all children were treated as one collective employer, her average quarterly wages increased from \$588.80 in 2017, to \$767.20 in 2018. Similarly, her gross wages from all employers in the first quarter of 2017 were \$2038.00, and her gross wages from all employers in the first quarter of 2018, increased to \$3836.00. Because the administrative record does not reflect a significant change in hours, and some increases in wages, claimant has not established that she is partially unemployed. Because she does not have wages with other employers and her current level of employment is consistent with the base-period wage history with this employer, she may not be considered partially unemployed and the availability for work is moot.

DECISION:

The May 30, 2018, (reference 02) unemployment insurance decision is affirmed. The claimant is not partially unemployed and benefits are denied. The account of the employer is not chargeable for the period at issue.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/rvs