

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VANASSA J WHITE
Claimant

APPEAL NO. 11A-UI-15321-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**ROCK KING LP
BURGER KING**
Employer

**OC: 10/23/11
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 22, 2011, reference 01, decision that allowed benefits based on an Agency conclusion that the claimant was partially unemployed. After due notice was issued, a hearing was held on December 21, 2011. Claimant Vanassa White participated and presented additional testimony through Ulysses Moore. Brad Kofron, restaurant manager, represented the employer. The administrative law judge took official notice of the Agency's administrative record (DBRO) of wages reported by or for the claimant, benefits disbursed to the claimant, and the claimant's average base period weekly wage.

ISSUES:

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

Whether the claimant was partially unemployed from her employment.

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: Vanassa White established a claim for unemployment insurance benefits that was effective October 23, 2011 in response to a reduction in the number of work hours the employer has available for her. Ms. White began her employment with Rock King, L.P., doing business as Burger King, in Waterloo in 2008 and continues with the employer as a cook. Brad Kofron became Restaurant Manager of the Waterloo Burger King in July 2011. Prior to Mr. Kofron becoming the manager, Ms. White's weekly work hours averaged 37. Prior to Mr. Kofron becoming the manager, Ms. White worked 6:00 a.m. to 2:00 p.m., Monday through Friday, and had weekends off. After Mr. Kofron joined the restaurant, he cut Ms. White's work hours one hour a day by having her start at 7:00 a.m. instead of 6:00 a.m. After Mr. Kofron hired a friend to work at the restaurant,

he further cut Ms. White's work hours and changed her schedule from week to week. Ms. White thereafter might be scheduled to work 9:00 a.m. to 2:00 p.m., 10:00 a.m. to 2:00 p.m., 9:00 a.m. to 1:30 p.m. The employer reduced Ms. White's work days from Monday through Friday to just four out of five of those days. The employer began sending Ms. White home early. The employer has recently restored some of the work hours so that Ms. White is working 7:00 a.m. to 2:00 p.m., but the employer has not restored her hours to what they were before Mr. Kofron joined the restaurant. Ms. White had tried to maintain her weekend days off, but has not otherwise restricted her work availability.

Ms. White's average weekly base period wages were \$243.90. This employer was Ms. White's sole base period employer. Ms. White's weekly unemployment insurance benefit amount has been set at \$158.00. Since she filed her claim Ms. White had reported the following weekly wages: \$145.00, \$148.00, \$210.00, \$208.00, \$170.00, \$150.00, \$152.00, and \$145.00.

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 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".

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).

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. 871 IAC 24.23(26). Contract for hire merely means the established conditions of the employment. See Wiese v. Iowa Dept. of Job Service, 389 N.W.2d 676, 679 (Iowa 1986).

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.]

The weight of the evidence establishes that Ms. White has been able and available for work since she established her claim for benefits. The evidence further indicates that Ms. White has indeed been partially unemployed from Burger King since she established her claim for benefits. Ms. White is eligible for benefits for any week in which her gross weekly wages do not exceed \$158.00 plus \$15.00, provided she is otherwise eligible. Because the employer is not providing the same employment that Ms. White enjoyed during the base period, the employer's account may be charged for benefits paid to Ms. White.

DECISION:

The Agency representative's November 22, 20011, reference 01 is affirmed. The claimant has been able and available for work since establishing her claim for benefits. The claimant has been partially unemployed since establishing her claim for benefits. Accordingly, the claimant is eligible for benefits for any week in which her gross weekly wages do not exceed \$158.00 plus \$15.00, provided she is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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