

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROBYN L MCINTYRE**  
Claimant

**APPEAL NO. 15A-UI-12537-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**NPC INTERNATIONAL INC**  
Employer

**OC: 10/11/15**  
**Claimant: Appellant (4/R)**

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

**STATEMENT OF THE CASE:**

Robyn McIntyre filed a timely appeal from the November 4, 2015, reference 02, decision that denied benefits effective October 11, 2015, based on an Agency conclusion that she was not partially unemployed from NPC International, Inc. After due notice was issued, a hearing was held on December 2, 2015. Ms. McIntyre participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. The administrative law judge took official notice of the following Agency administrative records : DBRO, KCCO, WAGE-A

**ISSUES:**

Whether Ms. McIntyre has been able to work and available for work since establishing her claim for benefits.

Whether Ms. McIntyre has been partially unemployed since establishing her claim for benefits.

Whether this 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: Robyn McIntyre was employed part-time with NPC International, Inc., d/b/a Pizza Hut. Ms. McIntyre's daughter was a manager at the restaurant where Ms. McIntyre worked. Ms. McIntyre worked for the employer both as a cook and as a server. When she worked as a cook, her wage was \$7.25 per hour. When she worked as a server, she was guaranteed wages and tips of \$7.25 per hour.

Iowa Workforce Development records indicate that the employer has reported quarterly wages paid to Ms. McIntyre as follows:

<u>Quarter</u>	<u>Wages</u>
2014/1	242.60
2014/2	1,154.18
2014/3	989.50
2014/4	141.27
2015/1	494.65
2015/2	2,497.58
2015/3	485.02

Ms. McIntyre's daughter was hospitalized in August. From that point onward, the employer has made no work hours available for Ms. McIntyre despite her request for work hours.

Since November 2013, Ms. McIntyre has had a second part-time employment at Dollar Tree, where she works 10-15 hours per week as a stocker/cashier. Ms. McIntyre's hourly wage at Dollar Tree is \$7.49. Ms. McIntyre also performs work for Sedona Staffing in temporary work assignments.

Ms. McIntyre established a claim for unemployment insurance benefits that was effective October 11, 2015. Ms. McIntyre discontinued the claim following the benefit week that ended November 14, 2015. Workforce Development calculated Ms. McIntyre's weekly benefit amount at \$177.00. During the five weeks of the claim, Ms. McIntyre reported wages from Dollar Tree and Sedona Staffing as follows:

<u>Benefit week end date</u>	<u>Wages reported</u>
10/17/15	160.00
10/24/15	120.00
10/31/15	100.00
11/07/15	110.00
11/14/15	110.00

During the five weeks in question, Ms. McIntyre also looked for additional employment by contacting at least two prospective employers each week.

#### **REASONING AND CONCLUSIONS OF LAW:**

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".

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.]

The evidence in the record establishes a separation from the employment that began prior to the effective date of the unemployment insurance claim. Accordingly, Ms. McIntyre was not partially unemployed from Pizza Hut during the five weeks during which her unemployment insurance claim was active. Indeed, because there has been a separation from the employment, the partial unemployment analysis that would apply to a job-attached employee does not apply. Nor does it disqualify Ms. McIntyre for benefits. The evidence establishes that Ms. McIntyre met the work ability and availability requirements during the five-week period of October 11, 2015 through November 14, 2015, when her claim was active. She continued to be available for work and work referrals. The claimant continued to make an active and earnest search for new employment to replace the part-time Pizza Hut employment that was no longer available to her. Ms. McIntyre is eligible for benefits for the period of October 11, 2015 through November 14, 2015, provided she meets all other eligibility requirements.

This matter will be remanded the Benefits Bureau for adjudication of the claimant's separation from NPC International, Inc., d/b/a Pizza Hut.

#### **DECISION:**

The November 4, 2015, reference 02, decision is modified as follows. The claimant separated from the employment with NPC International, Inc., d/b/a Pizza Hut before she established the claim that was effective October 11, 2015. Accordingly, the claimant was not partially

unemployed from that employer during the period of October 11, 2015 through November 14, 2015, when her claim for benefits was active. The claimant was able to work and available for work during that same period. The claimant is eligible for benefits for the five-week period of October 11, 2015 through November 14, 2015, provided she meets all other eligibility requirements.

This matter is remanded the Benefits Bureau for adjudication of the claimant's separation from NPC International, Inc., d/b/a Pizza Hut.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs