

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JUANITA G VALDEZ
Claimant

KWIK TRIP INC
Employer

APPEAL 16A-UI-11137-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/29/16
Claimant: Appellant (4-R)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 7, 2016, (reference 07) unemployment insurance decision that denied benefits as of July 24, 2016. The parties were properly notified about the hearing. A telephone hearing was held on October 31, 2016. Claimant participated. Employer did not participate. Official notice was taken of the administrative record of claimant's wage history and benefit payment history, with no objection.

ISSUES:

Is the claimant able to and available for work?

Is the claimant 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: Claimant was employed part-time as a cashier from June 2014 until around August 18, 2016 for the employer (KWIK TRIP INC). In January 2016, claimant started working full-time for ARAMARK CORPORATION and she voluntarily changed her schedule with the employer (KWIK TRIP INC). Starting in January 2016, claimant only worked approximately eight hours a week for the employer (KWIK TRIP INC) and only worked on Saturdays. Claimant's pay rate was not reduced in January 2016. Claimant has become separated from this employer (KWIK TRIP INC) around August 18, 2016, when she quit in order to go to school. Claimant continues to work for ARAMARK CORPORATION.

Claimant was placed on a temporary two week layoff from her full-time employment at ARAMARK CORPORATION for the weeks ending July 30, 2016 and August 6, 2016. From July 24, 2016 until claimant's separation from the employer (KWIK TRIP INC), she worked her normal hours.

The administrative record reflects that claimant has only filed a claim for benefits for the two weeks ending July 30, 2016 and August 6, 2016, when she was on a layoff from her full-time employer (ARAMARK CORPORATION).

Claimant testified she has not had a fact-finding interview regarding her separation from this employer (KWIK TRIP INC).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was partially unemployed between July 24, 2016, and August 6, 2016, and the part-time employer (KWIK TRIP INC) is relieved of benefit charges.

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".

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.

Iowa Code § 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.

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

Benefits 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.

An individual claiming benefits must be able to work, available for work, and actively and earnestly seeking work. Claimant only filed for benefits for two weeks (weeks ending July 30, 2016 and August 6, 2016) during her layoff from ARAMARK CORPORATION. During these two weeks, claimant worked her normal scheduled (Saturday, approximately eight hours) for the employer (KWIK TRIP INC). Inasmuch as claimant's part-time employer (KWIK TRIP INC) offered the same wages and hours since January 2016, no benefit charges shall be made to its account (KWIK TRIP INC, account number 116702-000).

DECISION:

The October 7, 2016, (reference 07) unemployment insurance decision is modified in favor of the appellant. Claimant is able to work and available for work between July 24, 2016, and August 6, 2016. Benefits are allowed provided claimant is otherwise eligible. The account of this employer (KWIK TRIP INC, account number 116702-000) shall not be charged.

REMAND: The separation issue with this employer (KWIK TRIP INC) as delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs