

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CASANDRA A VANPELT
Claimant

HCI VNS CARE SERVICES
Employer

APPEAL 16A-UI-13383-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/06/16
Claimant: Respondent (5R)**

Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the December 6, 2016 (reference 02) unemployment insurance decision that found claimant was eligible for unemployment benefits due to a short-term layoff. The parties were properly notified of the hearing. A telephone hearing was held on January 9, 2017. The claimant, Casandra A Vanpelt, did not participate. The employer, HCI VNS Care Services, participated through Hearing Representative Amanda Lange and witness Michelle Brandon. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits file including the fact finding documents.

ISSUES:

Is the claimant able to work and available for work?

Is claimant employed for the same hours and wages?

Does the claimant meet the definition of being considered partially unemployed?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The facts in this matter are undisputed. Claimant was employed full-time for this employer from April 5, 2016 until December 19, 2016. Claimant was employed as a home health aide and companion. Her hourly rate of pay was \$13.00. Her job duties included visiting clients at their homes and providing personal care. Claimant typically worked 34-40 hours per week. The week of November 6, 2016 claimant's hours were reduced because the employer had less work available for her due to reduction in clients. Claimant's hours were reduced to 18 hours the week of November 6, 2016; 28 hours the week of November 13, 2016; and 39 hours and 13 minutes the week of November 20, 2016. Claimant has received \$0.00 for the benefit week of November 6, 2016; \$97.00 for the benefit week of November 13, 2016; and \$0.00 for the benefit week of November 20, 2016.

On Friday, November 18, 2016 Ms. Vanpelt spoke to claimant about working Saturday, November 19, 2016; however, she did not have the time available that claimant would need to report to work. Ms. Vanpelt telephoned claimant and asked her to call her about working Saturday, November 19, 2016 once she knew the hours. Claimant did not return Ms. Vanpelt's

telephone call. This was not a suitable offer of work because the hours of work were never actually communicated to claimant.

There has been no initial investigation and determination regarding claimant's separation from this employer. The question of whether the claimant is separated from employment will be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was partially unemployed effective November 6, 2016.

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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 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 § 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 § 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 § 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 § 85.33, § 85.34, subsection 1, or § 85A.17, or responsible for paying indemnity insurance benefits.

Claimant's base period wages show:

2015/3 = \$6308;
2015/4 = \$5319;
2016/1 = \$6249;
2016/2 = \$5950.

The claimant was not employed under the same hours and wages as contemplated at hire and she was not receiving the same employment from the employer that the individual received during the individual's base period, therefore, she was considered partially unemployed. Benefits may be allowed based upon reporting of weekly earnings.

DECISION:

The December 6, 2016 (reference 02) unemployment insurance decision is modified with no change in effect. The claimant was partially unemployed and benefits are allowed, provided she

is otherwise eligible. She is required to report gross wages earned for each week of benefits claimed.

REMAND: The separation issue delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

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