

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARIA C CHAY-ESCOBAR
Claimant

APPEAL 21A-UI-05569-S2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA
Employer

OC: 12/27/20
Claimant: Appellant (1)

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Availability Disqualifications Same Hours and Wages
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

The employer filed an appeal from the February 9, 2021, (reference 01) unemployment insurance decision that denied benefits based on claimant's availability for work. The parties were properly notified of the hearing. A telephone hearing was held on April 26, 2021. Claimant participated personally. Employer participated through human resource business analyst Jessica Wade. The administrative law judge took official notice of the administrative file.

ISSUES:

Is the claimant totally, partially, or temporarily unemployed?
Was the claimant able to and available for work?
Is the employer's account subject to charge?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant has been employed full as a nursing assistant at the University of Iowa since February 15, 2008.

Claimant was furloughed December 21, 2020, through December 25, 2020, and was not paid any vacation or other wages during that week. Claimant was off work from December 30, 2020, through January 4, 2021, and received vacation wages during that week. She returned to work on a full-time basis on January 7, 2021. Claimant filed her claim for unemployment insurance benefits with an effective date of December 27, 2020, *after* the time period during which she was furloughed.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.1A(37) 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 96.4(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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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. 871-24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) 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.

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.

In this case, claimant was receiving full wages and therefore was fully employed after the effective date of the claim on December 27, 2020. Claimant was temporarily furloughed the week ending December 26, 2020, and is eligible for benefits that week, provided the claim is backdated.

The administrative law judge does not have the legal authority to backdate the claim. Since the pandemic began, the Benefits Bureau has backdated claims in limited circumstances. Therefore, the administrative law judge will remand this matter to the Benefits Bureau for a determination on whether this is such a case and whether benefits can be released for the week ending December 26, 2020.

DECISION:

The February 9, 2021, (reference 01) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective December 27, 2020.

REMAND:

This matter is remanded to the Benefits Bureau of Iowa Workforce Development for consideration of whether the claim can be backdated to December 20, 2020, and if so, for the Benefits Bureau to then release payment for the one week ending December 26, 2020, when claimant was temporarily furloughed and did not receive any vacation or other wages.



Stephanie Adkisson
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April 30, 2021
Decision Dated and Mailed

sa/ol