

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARSHANO S RICHARDSON
Claimant

APPEAL 19A-UI-07403-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SELECT MEDICAL CORPORATION
Employer

**OC: 08/18/19
Claimant: Appellant (4)**

Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant/appellant, Marshano S. Richardson, filed an appeal from the September 16, 2019, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 10, 2019. The claimant participated. The employer did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. Claimant Exhibit A was admitted. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant totally unemployed?
Is the claimant partially unemployed?
Is the claimant able to work and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for this employer in 2016, as a full-time CNA. A review of the administrative record reflects the claimant's hours have fluctuated during her base period history with this employer based on patient census.

Claimant established a claim with an effective date of August 18, 2019 due to the reduction in hours. Her weekly benefit amount (WBA) is \$438.00. Claimant has been working all available hours and is not guaranteed hours. She has no restrictions to the hours or shifts she can accept.

Claimant has reported the following wages each week since establishing her claim for benefits:

Week ending October 5, 2019: \$786.00
Week ending September 28, 2019: \$148.00
Week ending September 21, 2019: \$568.00
Week ending September 14, 2019: \$200.00
Week ending September 7, 2019: \$278.00
Week ending August 31, 2019: \$219.00
Week ending August 24, 2019: \$186.00

She also works part-time for Scott County and has been reporting all earned wages. Her wages have fluctuated each week since opening her claim from \$148.00 to \$786.00. In addition, she is seeking full-time employment in the medical field.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is partially unemployed for the weeks ending August 24, 31, and September 7, 14, 28, 2019.

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.

Under Iowa Employment Security Law, an individual must be totally or partially unemployed to be eligible for benefits. Iowa Code § 96.19(38). Total unemployment is when someone has received no wages and performed no services during any given week. *Id.* In this case, the claimant has performed services and earned wages for each week she has claimed benefits. Therefore, claimant is not totally unemployed.

The next question is whether claimant is partially unemployed. In order to be partially unemployed, an individual must be laid off from full-time employment or working less than his or her regular full-time work week. *Id.* If an individual is employed in a part-time position working the same hours and wages as contemplated at hire, he or she cannot be considered partially unemployed. Iowa Admin. Code r. 871-24.23(26).

In this case, the undisputed evidence is claimant was hired into a full-time position. The employer changed claimant's position to a part-time position, due to a low census in the facility. Claimant's hours were reduced through no request or fault of her own. Because the claimant is not currently employed under the same hours and wages as contemplated at hire, she is considered partially unemployed. The administrative law judge concludes claimant is eligible for benefits for the weeks ending August 24, 31, and September 7, 14, 28, 2019. She is ineligible for benefits for the week ending September 21, 2019 and the week ending October 5, 2019 because she earned wages in excess of her weekly benefit amount plus \$15.00. Iowa Code § 96.19(38)(b)(1).

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.

Benefits may be allowed based upon reporting of weekly earnings. For whatever period the employer is not offering the same wages and hours as contemplated in the contract or terms of hire, it may be liable for benefit charges to its account.

DECISION:

The September 16, 2019, (reference 01) unemployment insurance decision is modified in favor of the claimant. The claimant is partially unemployed and benefits are allowed, provided she is otherwise eligible. (She is ineligible for benefits for the week ending September 21, 2019 and the week ending October 5, 2019 due to earning wages in excess of her weekly benefit amount plus \$15.00) She is required to report gross wages earned for each week of benefits claimed. The employer's account may be liable for charges.

Jennifer L. Beckman
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Decision Dated and Mailed

jlb/scn