

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MONICA WILLIAMS
Claimant

APPEAL NO. 11A-UI-03922-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

G M R I INC
Employer

OC: 12/19/10
Claimant: Appellant (2)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.4(3) – Still Employed Same Hours and Wages
Iowa Code Section 96.7(2) – Employer Liability

STATEMENT OF THE CASE:

Monica Williams filed a timely appeal from the March 24, 2011, reference 02, decision that denied benefits effective January 16, 2011 based on an Agency conclusion that she was unduly restricting her work availability. After due notice was issued, a hearing was held on April 19, 2011. Claimant participated. Artoria Surratt, Sales Manager, represented the employer.

ISSUES:

Whether the claimant has been able to work and available for work since January 16, 2011.

Whether the claimant was partially unemployed from her employment since January 16, 2011.

Whether the 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: Monica Williams is employed by GMRI, Inc., d/b/a Olive Garden. Ms. Williams is a part-time employee. Ms. Williams established a claim for unemployment insurance benefits that was effective December 19, 2010. Ms. Williams was a line cook at the time and established the claim in response to a decrease in the number of work hours the employer made available to her. Ms. Williams receives public assistance for childcare expenses and is required by the Department of Human Services to maintain at least 28 hours each week. After Ms. Williams established her claim for unemployment insurance benefits, the employer agreed to move Ms. Williams from the line cook position to a host position. Ms. Williams is available to work any shift except Friday and Sunday nights. Ms. Williams has not declined any work the employer has available for her.

REASONING AND CONCLUSIONS OF LAW:

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 96.19, 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).

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. 871 IAC 24.23(26). Contract for hire merely means the established conditions of the employment. See Wiese v. Iowa Dept. of Job Service, 389 N.W.2d 676, 679 (Iowa 1986).

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 weight of the evidence in the record establishes that since Ms. Williams filed her claim for benefits, she has continued to be available to work the shifts the employer makes available to her and has not declined any work. The weight of the evidence also establishes that Ms. Williams continues to be partially unemployed from G M R I, Inc. Since January 16, 2011, Ms. Williams has met the availability requirements of Iowa Code section 96.4(3) and is eligible for benefits, provided she is otherwise eligible. Because Ms. Williams is still not consistently back up to the number of hours the employer provided to her prior to her claim, the employer's account may be charged for benefits paid to Ms. Williams. Ms. Williams should continue to report her weekly gross wages to Iowa Workforce Development as long as she continues her claim for unemployment insurance benefits.

DECISION:

The Agency representative's March 24, 2011, reference 02, is reversed. The claimant has been able and available for work, but partially unemployed since January 16, 2011. Accordingly, the claimant is eligible for benefits, provided she meets all other eligibility requirements. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css