

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CARMEL A PEDRETTI
Claimant

ROC TAPROOM INC
Employer

APPEAL 21A-UI-18726-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Respondent (4)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.19(38)B – Total, Partial, Temporary Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the August 18, 2021 (reference 04) unemployment insurance decision that found claimant was eligible for unemployment benefits because she was still working on call or part-time and the employer was not offering the same pattern of employment as in her base period. The parties were properly notified of the hearing. A telephone hearing was held on October 14, 2021. The claimant did not participate. The employer participated through witness Mikaylah Veglahn. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Is the claimant eligible for total, partial, or temporary unemployment benefits?
Is claimant employed for the same hours and wages?
Is the claimant able to and available for work?
Is the employer's account subject to charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant started working for this employer on February 19, 2020. She remains employed to date. She works part-time as a server. Claimant was hired as a part-time employee and was never guaranteed a certain number of hours per week. Her hours vary based upon business needs of the employer and availability of the claimant.

Claimant filed an initial claim for benefits effective March 22, 2020. From March 15, 2020 through April 19, 2020, the restaurant was closed down and the claimant was not working due to the COVID-19 pandemic. Claimant returned to her regular part-time position on April 20, 2020. The restaurant was closed again from December 20, 2020 through January 16, 2021 due to a COVID-19 outbreak and claimant was not working during those four weeks of time due to that closure. For all other weeks, the claimant continued working part-time hours. Claimant's wage history consists of only part-time hours.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code § 96.4(3) provides:

Required Findings.

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 Code § 96.19(38) was replaced by Iowa Code § 96.1A(37). Iowa Code § 96.1A(37) provides as follows:

Definitions. As used in this chapter, unless the context clearly requires otherwise:

37. "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 provides:

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.

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.

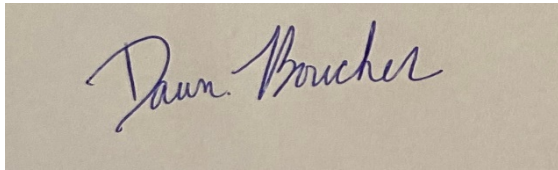
Because claimant was hired to work only part-time hours, was not guaranteed full-time hours, and the wage history consists of only part-time wages, the claimant is not considered to be unemployed within the meaning of the law during the weeks in which she worked part-time hours. For the weeks in which she was totally unemployed, March 22, 2020 through the benefit week-ending April 18, 2020, as well as December 20, 2020 through January 16, 2021, the claimant was eligible for unemployment insurance benefits during the employer's shut down and lack of work.

However, when an individual is hired to work part-time, the implied agreement is that full-time work will not be regularly available. Thus, since the employer continued to provide the same part-time employment and the claimant was employed under the same hours and wages as contemplated when she was hired, she is not considered partially unemployed for weeks in which the claimant was working.

As such, unemployment insurance benefits are allowed effective March 22, 2020 through April 18, 2020 during the employer's closure and claimant being totally unemployed. Benefits are allowed effective December 20, 2020 through January 16, 2021 during the employer's second closure and while the claimant was totally unemployed. Benefits are denied effective April 19, 2020 through December 19, 2020 and again effective January 17, 2021 and continuing as the claimant was still employed in her part-time position with the employer.

DECISION:

The August 18, 2021 (reference 04) decision is modified in favor of the appellant. Claimant was totally unemployed and benefits are allowed effective March 22, 2020 through April 18, 2020. Benefits are denied effective April 19, 2020 through December 19, 2020 as the claimant was still employed part-time at the same hours and same wages as her original contract of hire. Benefits are allowed effective December 20, 2020 through January 16, 2021 while the employer was closed and the claimant was totally unemployed. Benefits are denied effective January 17, 2021 and continuing as the claimant remained employed at the same hours and wages as her original contract of hire.

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Dawn Boucher
Administrative Law Judge

October 20, 2021
Decision Dated and Mailed

db/scn