

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERIN C KRANTZ

Claimant

APPEAL NO. 12A-UI-11007-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KIRKWOOD COMMUNITY COLLEGE

Employer

OC: 08/05/12

Claimant: Appellant (4)

Section 96.4-3 – Availability for Work
871 IAC 23.43(4) – Supplemental Employment

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated August 23, 2012, reference 02, that concluded she was not eligible for partial unemployment insurance benefits effective August 5, 2012. A telephone hearing was held on October 5, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Sheri Hlavacek participated in the hearing on behalf of the employer.

ISSUE:

Is the claimant eligible for total or partial unemployment insurance benefits effective August 5, 2012?

FINDINGS OF FACT:

The claimant started working part-time for the employer on December 11, 2011, as a coach in the employer's social skills training for persons with autism spectrum disorder. She was working about 10 hours per week at a rate of pay of \$11.05 per hour. She stopped working on May 31, 2012, at the end of the school year.

The claimant has also worked an average of 24 hours per week for Four Oaks Family and Children's Services since August 2011. Her rate of pay was \$9.25 per hour. She worked there until August 9, 2012, and then was on a short-term layoff until she returned to work on August 28, 2012. She worked three days for a total about 10 hours for Four Oaks during the week of August 26 to September 1 for earnings of \$92.50.

The claimant returned to work for the employer in her coach position during the week of August 19 and worked a total of 12 hours on August 23 and 24 for earnings of \$132.60. She worked about 15 hours for the employer during the week of August 26 to September 1 for earnings of \$165.75. Her total earnings for the week ending September 1 from Four Oaks and the employer would be \$258.25.

Because of her layoff from Four Oaks, the claimant filed a new claim for unemployment insurance benefits effective August 5, 2012. Her weekly benefit amount was determined to be \$237 and her weekly earnings limit was \$252.

The claimant reported having \$122 in earnings for the week ending August 11, 2012. She reported having zero earnings for the weeks ending August 18 and 25. She reported having \$116 in earnings for the week ending September 1. For the next six weeks, the claimant reported earnings of well over \$252.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a. A claimant was laid off due to lack of work from her regular employer, which is why she applied for unemployment insurance benefits. In fact, the Agency concluded she was on a short-term layoff from Four Oaks.

She filed for benefits because her regular employer laid her off and her supplemental employment with the employer does not disqualify her from receiving unemployment insurance benefits. The Agency apparently relied on 871 IAC 24.23(26) in denying benefits to the claimant.

871 IAC 24.23(26) provides: "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."

This section does not apply to the facts in this case, where the claimant is applying for benefits after she was laid off by her regular employer, which was Four Oaks. It should only be used when the claimant applies for partial unemployment insurance benefits from a base-period employer and that base-period employer who continues to employ the claimant for the same number of hours and wages as established at the time of hire. Instead, this case is governed by 871 IAC 23.43(4)a, which deals with a situation where a claimant has supplemental employment in addition to her regular employment.

871 IAC 23.43(4)a provides: "An individual, who has been separated with cause attributable to the regular employer and who remains in the employ of the individual's part-time, base period employer, continues to be eligible for benefits as long as the individual is receiving the same employment from the part-time employer that the individual received during the base period. The part-time employer's account, including the reimbursable employer's account, may be relieved of benefit charges."

The claimant is eligible for benefits, and the employer's account is exempt from charge for benefits paid to the claimant as long as the employer continues to provide the claimant with the same employment as provided during the base period.

The next question is for what weeks is the claimant qualified for benefits and for what amount is she eligible?

Iowa Code § 96.3-3 provides:

3. Partial unemployment. An individual who is partially unemployed in any week as defined in section 96.19, subsection 38, paragraph "b", and who meets the conditions of eligibility for benefits shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. The benefits shall be rounded to the lower multiple of one dollar.

Iowa Code § 96.19-38-b provides in part:

b. 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.

The claimant is eligible for \$174 for the week ending August 11 [$\$237 - (\$122 - \$59) = \174]. She is eligible for \$237 for the week ending August 18. She is eligible for \$163 for the week ending August 25 [$\$237 - (\$133 - \$59) = \174]. She is not eligible for benefits for any other weeks because her properly reported earnings were over the \$252 earnings limit. It is clear that the claimant did not report her earnings accurately on her weekly claims, and the hours and wages used in my calculations are based on the preponderance of the evidence.

DECISION:

The unemployment insurance decision dated August 23, 2012, reference 02, is modified in favor of the claimant. She is eligible for \$174 for the week ending August 11, \$237 for the week ending August 18, and \$163 for the week ending August 25. She is not eligible for benefits for any other weeks, because her properly reported earnings were over the \$252 earnings limit.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw