

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMIE L FRANSEN
Claimant

PLATINUM HOLDINGS LLC
Employer

APPEAL 17R-UI-06494-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/10/16
Claimant: Respondent (2)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions
Iowa Admin. Code r. 871-24.22(2)f – Availability for Work - Part-time Worker/Student

STATEMENT OF THE CASE:

Platinum Holdings, LLC (employer) filed an appeal from the April 28, 2017, reference 04, unemployment insurance decision that allowed benefits based upon the determination Jamie L. Fransen (claimant) was partially unemployed and able to and available for work. A telephone hearing was held on April 28, 2017 with Administrative Law Judge Nicole Merrill. The claimant did not participate as she did not receive the hearing notice. The employer participated through General Manager Gerrilee Coffman. Judge Merrill reversed the unemployment insurance decision and denied benefits. She also remanded the issue of separation and overpayment back to the Benefits Bureau for an initial investigation and determination.

The claimant appealed Judge Merrill's decision to the Employment Appeal Board (EAB). On June 26, 2017, the EAB remanded the case to the Appeals Bureau for another hearing. A telephone hearing on the remanded case was scheduled for July 13, 2017. The parties were properly notified about that hearing. On July 7, 2017, as a result of Judge Merrill's remand, the Benefits Bureau issued a separation decision denying the claimant benefits which involved the same parties and same incident as the remanded case scheduled for hearing with the Appeals Bureau.¹

On July 13, 2017, a hearing was held on the remand of the employer's appeal to the April 28, 2017, reference 04, decision. The claimant participated. The employer participated through Coffman and Human Resources Manager Alyssa Kahler. The claimant verbally appealed the July 7, 2017, reference 03, separation decision. The parties agreed to waive notice on the separation issue so the remanded issues and separation issue could be consolidated into one hearing and heard at that time. The employer submitted proposed exhibits to the Appeals Bureau the day before the hearing. It did not follow the instructions on the back of the hearing notice and mail them to the claimant. The employer was offered a continuance for the proposed exhibits to be sent to the claimant or the hearing could proceed without the documents being

¹ This decision is reference 03 for the claim year that began April 9, 2017.

admitted into the record. The employer chose to proceed without the proposed exhibits being admitted into the record.

ISSUES:

Is the claimant partially unemployed?
Is the claimant able to and available for work?
Is the employer's account liable for potential charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed part-time as a Bartender and Server beginning on October 9, 2016, and her last day worked was March 25, 2017. On March 25, 2017, the claimant was given a written coaching by the Assistant Managers. She was told she needed to sign the coaching. The claimant declined and said she wanted to protest the issue to higher level management. The claimant was told she could write at the bottom of the page that she refused to sign it with her initials and explain why she disagreed with the coaching. The claimant refused to do so until she spoke with higher level management or human resources. The Assistant Managers told her that she would be removed from the schedule until she signed the coaching.

The following day, the claimant contacted Human Resources Manager Alyssa Kahler who explained to the claimant that she at least needed to write that she was refusing to sign the warning and she would be placed back on the schedule. The claimant stated she wanted to protest the issue further. Kahler sent an email to General Manager Gerrilee Coffman and District Manager David McClain, who is in another state and is not actively involved in the location where the claimant worked. No one contacted the claimant. The claimant returned to the employer to pick up her final paycheck, but did not sign the written coaching.

The claimant was removed from the employer's system on April 19, 2017. The employer had not heard from the claimant for approximately three weeks and it had received the notice of claim for her unemployment benefits. The employer believed the claimant had voluntarily quit her employment.

The week of March 26, 2017, the claimant reopened her April 10, 2016 claim for benefits. After receiving benefits for two weeks, her benefit year ended. The claimant opened a new claim year for benefits beginning April 9, 2017.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is totally unemployed and the issue of partial unemployment is moot. However, the claimant is not able to or available for work. Benefits are denied effective March 26, 2017.

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.

Iowa Admin. Code r. 871-24.23 provides, in relevant part:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

(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.

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 not performed services or earned wages during any week she has filed for benefits since March 26, 2017. Therefore, she is totally unemployed and the issue of whether she is partially unemployed is moot.

The claimant was placed on a disciplinary suspension on March 25, 2017 for refusing to acknowledge a disciplinary coaching. She continued to be employed but was not working as she refused to follow the employer's reasonable instructions. The claimant was unemployed because she was not willing to work under the conditions for which work was available. The claimant is not able to and available for work effective March 26, 2017.

As the claimant is not partially unemployed and the employer is not in the claimant's base period for her April 10, 2016 claim year, the issue of whether the employer's account is subject to charge on this basis is moot.

DECISION:

The April 28, 2017, reference 04, unemployment insurance decision is reversed. The claimant is totally unemployed and the issue of whether she is partially unemployed is moot. The claimant was not able to and available for work as there was work available to her but she declined it by refusing to follow the employer's reasonable instructions. Benefits are denied effective March 26, 2017. As the claimant is not partially unemployed and the employer is not in the claimant's April 10, 2016 base period, the issue of whether the employer's account is subject to charge on this basis is moot.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn