

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GENEATHA J HARRINGTON
Claimant

PANTHER VENTURES LLC
Employer

APPEAL 17A-UI-05564-DL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/16/17
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed an appeal from the May 17, 2017, (reference 01) unemployment insurance decision that allowed benefits based upon being able to and available for work. The parties were properly notified about the hearing. A telephone hearing was held on June 28, 2017. Claimant participated. Employer participated through general manager Rose Miller.

ISSUES:

Is the claimant able to work and available for work effective April 16, 2017?
Does the claimant meet the definition of being considered partially unemployed?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Cozy Van, Inc. (561369) hired claimant to work part-time (8 a.m. to 4 or 5 p.m. Monday, Tuesday, Wednesday and Thursday) as a side-entry van driver. Panther Ventures LLC (587834) purchased the business November 16, 2016, and claimant remains employed. It started with 20 vans and as of April 1, 2017, retired three side-entry and two rear-entry vans. The “Drivers (sic) Daily Shift Schedules” memo was provided to all drivers and claimant received her copy on January 16, 2017. (Employer’s Exhibit 3) Because the outlined shifts did not coincide with the availability claimant provided to the employer she was assigned to “specialty shifts,” which the employer would create as needed. The employer did not verify with claimant her shift category or otherwise discuss options. Claimant is paid \$9.40/hour and the administrative record reflects she worked 26.11 hours per week in the first quarter of 2017. No records are available for the second quarter but the employer’s CPA Paul Mixdorf calculated that her average hours have decreased from 25.16 to 14.88 hours per week because of not being available to work the shifts outlined in the shift schedule memo. (Employer’s Exhibit 1 p. 1, 3) In a first aid inservice meeting on May 10, 2017, claimant asked an owner, Nick, about why her hours had been reduced. He said he would try to assign her more hours but her hours declined. Claimant has sought work with the employer frequently since June 11, 2017. (Claimant’s Exhibit A) Claimant

had determined that she would be able to work the morning shift Monday through Friday from 6 a.m. to 2 p.m. (Employer's Exhibit 3) but did not notify the employer until the hearing. Scheduler Lorene Geiger noted that claimant was ill on May 1 and 2, but that there would not have been work for her on May 1. On May 10 Geiger noted that she attempted to offer claimant work for May 11, but could not reach her. On May 24, when Geiger offered claimant work in a rear-entry van, claimant explained she has medical limitations that keep her from loading wheelchairs into anything other than a side-entry van. Geiger was able to find her work in a side-entry van for the day. (Employer's Exhibit 2) The employer did not provide additional information about when work was offered but claimant was not available. It hired five new drivers, including one for specialty shifts. Claimant had provided a medical restriction note to the prior employer and claimant was unaware that personnel records were not transferred.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is partially unemployed effective April 16, 2017, and is available for work.

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".

Iowa Code section 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 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.

Employer initiated the communication about schedule changes two months after the business transition. Because there was unclear communication between claimant and employer about the interpretation of the shift schedules memo and most members of management are considerably more experienced in personnel issues and operate from a position of authority over a subordinate employee, it is reasonably implied that the ability to communicate clearly is extended to discussions about scheduling and employment status. Further, since the employer hired more drivers, specifically one for specialty shifts, the employer's actions adversely affected her working hours. Nor has it provided evidence that claimant refused work other than two days. Because she is not currently employed under the same hours and wages as contemplated at hire, she is considered partially unemployed. Benefits may be allowed based upon reporting of weekly gross 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 May 17, 2017, (reference 01) unemployment insurance decision is affirmed. The claimant is partially unemployed and benefits are allowed, provided she is otherwise eligible. She is required to report gross wages earned for each week of benefits claimed. The employer's account (587834) may be liable for charges.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/scn