

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PAUL SERNA
Claimant

APPEAL 20A-UI-01285-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

D OF S FOODS INC
Employer

**OC: 12/29/19
Claimant: Appellant (2)**

Iowa Code § 96.19(38)b – Definitions – Total, partial unemployment
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search
Iowa Code § 96.7(2)A(2) – Charges – Same base period employment
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages

STATEMENT OF THE CASE:

Claimant filed an appeal from the February 3, 2020 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on March 11, 2020, at 3:00 p.m. Claimant participated. Evan McCord, General Manager, was a witness. Employer participated through Justin Macchione, Operations Supervisor. No exhibits were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant is eligible to receive partial benefits.
Whether the claimant is able to and available for work.
Whether claimant is still employed at the same hours and wages.
Whether employer's account is subject to charge.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began employment with D of S Foods, Inc. (d/b/a McDonald's) as a full-time maintenance worker on August 17, 2018. Claimant worked Monday through Friday from 6:00 a.m. until 2:00 p.m. Between January 7, 2020 and February 7, 2020, employer changed claimant's schedule to Monday through Friday from 6:00 a.m. until 10:00 a.m. due to lack of work. Claimant's hourly wage is \$11.60. Claimant filed an original claim for unemployment insurance benefits effective December 29, 2019. Claimant filed weekly claims for benefits for the weeks ending January 18, 2020 through February 8, 2020 and reported earnings for each of these weeks. Claimant's weekly benefit amount is \$231.00. Claimant was able to and available for work between January 7, 2020 and February 7, 2020 and did not restrict the hours he was available for work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was partially unemployed from January 7, 2020 to February 7, 2020.

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 Admin. 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.

Iowa Code section 96.19(38)b provides:

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.

Iowa Code section 96.7(2)a(2) 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.

Between January 7, 2020 and February 7, 2020, claimant was not employed under the same hours and wages as contemplated at hire and earned less than his weekly benefit amount plus fifteen dollars; therefore, claimant is considered partially unemployed for that period of time. Benefits may be allowed based upon reporting of weekly earnings. For whatever period the employer was 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 February 3, 2020 (reference 01) unemployment insurance decision is reversed. Claimant was partially unemployed between January 7, 2020 and February 7, 2020. Benefits are allowed provided claimant is otherwise eligible and subject to claimant reporting his weekly earnings. Employer's account is liable for charges.

Adrienne C. Williamson
Administrative Law Judge
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Decision Dated and Mailed

acw/rvs