

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

MICHELE A VAUGHN
Claimant

APPEAL NO. 19A-UI-01631-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KINSETH HOTEL CORPORATION
Employer

OC: 01/06/19
Claimant: Respondent (4R)

Iowa Code section 96.4(3) – Able & Available
Iowa Code Section 96.19(38)(b) – Partial Unemployment
Iowa Code section 96.7(2) – Employer Liability

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 14, 2019, reference 02, decision that held the claimant was eligible for benefits effective January 6, 2019 provided she was otherwise eligible and that the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was able to work, available for work, but partially unemployed. After due notice was issued, a hearing was held on March 11, 2019. Claimant Michele Vaughn participated. Megan Milligan of Employers Unity represented the employer and presented testimony through Larry Thompson. Exhibits 1, 2 and Department Exhibits D-1, D-2 and D-3 were received into evidence.

ISSUES:

Whether the claimant has been able to work and available for work since January 6, 2019.

Whether the claimant has been partially unemployed since January 6, 2019.

Whether the employer's account may be assessed for benefits paid to the claimant for the period since January 6, 2019.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Michele Vaughn is employed by Kinseth Hotel Corporation as a part-time housekeeper at the Best Western motel in Fairfield. Larry Thompson is the motel's general manager. Ms. Vaughn has been employed by Kinseth during two distinct periods. The most recent employment began in May 2018. The earlier period of employment predated the relevant base period.

Ms. Vaughn established an original claim for benefits that was effective January 6, 2019. Kinseth Hotel Corporation is a base period employer in connection with the claim. Iowa Workforce Development set Ms. Vaughn's weekly benefit amount at \$194.00. Ms. Vaughn had made weekly claims for eight consecutive weeks between January 6, 2019 and March 2, 2019. Ms. Vaughn then discontinued her claim. In connection with each weekly claim, Ms. Vaughn reported that she was still working, that she was able to work and available for work, and that she had not refused any offers of work. For the first week of the claim, Ms. Vaughn reported

she had made three job contacts. For the rest of the claim weeks, Ms. Vaughn reported two job contacts. Ms. Vaughn reported weekly wages and received weekly benefits as follows:

<u>Benefit week end date</u>	<u>Wages reported</u>	<u>Benefits paid</u>
01/12/19	90.00	152.00
01/19/19	225.00	0.00
01/26/19	176.00	66.00
02/02/19	68.00	174.00
02/09/19	144.00	98.00
02/16/19	45.00	194.00
02/23/19	225.00	0.00
03/02/19	234.00	0.00

Ms. Vaughn's base period for purposes of the January 6, 2019 original claim consists of the fourth quarter of 2017 and the first, second and third quarters of 2018. Ms. Vaughn's base period quarterly wages were as follows. The available quarterly wage report also included more recent wages paid for the fourth quarter of 2018.

<u>Employer</u>	<u>Wages by calendar quarter</u>				
	<u>2017/4</u>	<u>2018/1</u>	<u>2018/2</u>	<u>2018/3</u>	<u>2018/4</u>
T&H Pharmacy Solutions	4,478	1,034			
Kinseth Hotel Corporation			351	1979	1956
Temp Associates Iowa Inc.			1,316		

Based on the quarterly wage reports, Ms. Vaughn's average weekly wages from the Kinseth employer were \$152.23 during the third quarter of 2018 and \$150.46. Ms. Vaughn's hourly wage throughout the employment has been \$9.00. Based on the hourly wage and the average weekly hours, Ms. Vaughn's weekly work hours averaged 16.91 during the third quarter of 2018 and 16.71 during the fourth quarter of 2018.

According to Ms. Vaughn certified time cards, Ms. Vaughn has averaged 33.34 hours of work per-two-week pay period. That amounts to a weekly average of 16.67 hours, which places the average weekly wages at \$150.03.

Since Ms. Vaughn established the original claim for unemployment insurance benefits that was effective January 6, 2019, her actual weekly hours and wages have been as follows:

<u>Week ending date</u>	<u>hours worked</u>	<u>wages paid</u>	<u>wages reported</u>
1/12/19	10.49	94.41	90.00
1/19/19	25.41	228.69	225.00
1/26/19	19.15	172.35	176.00
2/2/19	6.5	58.50	68.00
2/9/19	12.93	116.37	144.00
2/16/19	7.75	69.75	45.00
2/23/19	24.88	223.92	225.00
3/2/19	29.12	262.08	234.00

During the week that ended January 12, 2019, Ms. Vaughn worked all 10.49 of reduced hours the employer had for her. Ms. Vaughn's wages for the week were substantially less than her \$194.00 weekly benefit amount.

During the week that ended January 19, 2019, Ms. Vaughn was absent one day due to an off-duty fall, but still managed to work 25.41 hours the employer had available for her, for which she received \$228.69 in wages. The wages exceeded the \$194.00 weekly benefit amount by more than \$15.00.

During the week that ended January 26, 2019, Ms. Vaughn was absent from two of her six scheduled shifts. However, she worked 19.15 hours, an amount higher than her weekly average. Because Ms. Vaughn missed a couple shifts, her wages for the week were only \$172.35.

During the week that ended February 2, 2019, Ms. Vaughn worked all of the 6.5 reduced hours the employer had for her. Ms. Vaughn's wages for the week were substantially less than her \$194.00 weekly benefit amount.

During the week that ended February 9, 2019, Ms. Vaughn missed one shift due to a migraine, but worked the remaining 12.93 hours the employer had available to her. Ms. Vaughn's wages for the week were substantially less than her weekly benefit amount.

During the week that ended February 16, 2019, Ms. Vaughn called out sick for one day, but worked the remaining 7.75 hours the employer had for her that week. Ms. Vaughn's wages for the week were substantially less than her weekly benefit amount.

During the week that ended February 23, 2019, Ms. Vaughn worked the 24.88 hours the employer had available for her, for which she was paid \$223.92. The weekly wages exceeded the \$194.00 weekly benefit amount by more than \$15.00.

During the week that ended March 2, 2019, Ms. Vaughn worked the 29.12 hours the employer had available for her, for which she was paid \$262.08. The weekly wages exceeded the \$194.00 weekly benefit amount by more than \$15.00.

REASONING AND CONCLUSIONS OF LAW:

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. Code r. 871-24.23(29) provides:

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

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

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. Iowa Code Section 96.19(38)(b).

Iowa Code section 96.7(1) and (2) provides, in relevant part, as follows:

Employer contributions and reimbursements.

1. Payment. Contributions accrue and are payable, in accordance with rules adopted by the department, on all taxable wages paid by an employer for insured work.

2. Contribution rates based on benefit experience.

a. (1) The department shall maintain a separate account for each employer and shall credit each employer's account with all contributions which the employer has paid or which have been paid on the employer's behalf.

(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.

[Emphasis added.]

The weight of the evidence establishes that Ms. Vaughn was able to work and available for work within the meaning of law during each of the claim weeks between January 6, 2019 and March 2, 2019. Even during those weeks when Ms. Vaughn was dealing with a health issue, she remained available for work with the employer for the majority of the scheduled week.

The findings of fact set forth above indicate there were some claim weeks when Ms. Vaughn was partially unemployed within the meaning of the law and other weeks in which she did not meet one or both of the partial unemployment requirements.

Ms. Vaughn was partially unemployed during the week that ended January 12, 2019 because the reduction in available work hours and the weekly wages did not exceed the weekly benefit amount by \$15.00. Ms. Vaughn was eligible for benefits for the week, provided she meets all other eligibility requirements. The employer's account may be charged for benefits for the week.

Ms. Vaughn was not partially unemployed during the week that ended January 19, 2019 because she was not subject to reduced work hours and her weekly wages exceeded her weekly benefit amount by more than \$15.00. Ms. Vaughn is not eligible for benefits for the week.

Ms. Vaughn was not partially unemployed during the week that ended January 26, 2019 because she was not subject to reduced work hours that week. Ms. Vaughn is not eligible for benefits for the week.

Ms. Vaughn was partially unemployed during the weeks that ended February 2, February 9, and February 16, 2019 because of the reduction in available work hours and because her weekly wages did not exceed the weekly benefit amount by \$15.00. Ms. Vaughn is eligible for benefits for all three weeks, provided she meets all other eligibility requirements. The employer's account may be charged for benefits for these weeks.

Ms. Vaughn was not partially unemployed during the weeks that ended February 23 and March 2, 2019 because she was not subject to reduced work hours and her weekly wages exceeded her weekly benefit amount by more than \$15.00. Ms. Vaughn is not eligible for benefits for these weeks.

This matter will be remanded to the Benefits Bureau for entry of an overpayment decision regarding the \$66.00 in benefits Ms. Vaughn received for the week that ended January 26, 2019.

DECISION:

The February 14, 2019, reference 02, decision is modified as follows. The claimant was able to work and available for work during the period of January 6, 2019 through March 2, 2019. The claimant was partially unemployed during the benefits weeks that ended January 12, February 2, February 9, and February 16, 2019. The claimant is eligible for benefits for those four weeks provided she meets all other eligibility requirements. The employer's account may be charged for benefits for those four weeks. The claimant was not partially unemployed during the weeks that ended January 19, January 26, February 23, and March 2, 2019, and is not eligible for benefits for those weeks.

This matter is remanded to the Benefits Bureau for entry of an overpayment decision regarding the \$66.00 in benefits Ms. Vaughn received for the week that ended January 26, 2019.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs