

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DEBRA A DEAN
Claimant

APPEAL 17A-UI-07251-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCED INVOICE FUNDING LLC
Employer

**OC: 07/02/17
Claimant: Respondent (1R)**

Iowa Code § 96.4(3) – Able and Available
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Part time, same hours and wages
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a – Same Base Period Employment

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the July 14, 2017 (reference 02) unemployment insurance decision that found claimant was eligible for unemployment benefits. The parties were properly notified of the hearing. A telephone hearing was held on August 4, 2017. The claimant, Debra A. Dean, participated personally. The employer, Advanced Invoice Funding LLC, participated through witnesses Jennifer Heller and Rebecca Poe. Claimant's Exhibit A was admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records including the fact-finding documents.

ISSUES:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time for this employer beginning September 1, 2016. Claimant's job title was bookkeeper and her immediate supervisor was Ms. Poe. Claimant was paid \$14.00 per hour.

Claimant was hired as a part-time worker with the potential to work full-time, depending upon the business needs. Claimant worked other part-time jobs during the time she worked for this employer. When claimant started her other part-time job for Crystal Distribution her schedule with this employer became Monday through Friday each week from approximately 1:00 p.m. to 5:00 p.m. Dependent on business needs, Ms. Poe would occasionally tell the claimant to leave early due to lack of work.

On June 26, 2017, Ms. Poe and Ms. Heller told claimant that due to business needs, she was no longer needed to work as she had been previously scheduled to. Ms. Poe and Ms. Heller instructed claimant that she may be needed at some future date and could work as an on-call worker. Claimant responded that she could not work as an on-call worker.

At 3:18 p.m. on July 18, 2017, claimant emailed Ms. Poe that she would be available to work as requested on Thursday, July 20, 2017. Exhibit A. However, at 4:34 p.m. on July 18, 2017, Ms. Poe emailed the claimant stating "I've been sitting here contemplating your responses and have decided that, at this point, based on the misconduct in your responses, it would be too volatile of a situation to have you come in on Thursday. Please consider this your notice of termination." Exhibit A.

There has been no initial investigation and determination regarding claimant's separation from this employer. The question of whether the claimant is separated from employment and whether that separation is disqualifying will be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is able to and available for work effective July 2, 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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 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 Code § 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 § 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 § 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 § 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 § 85.33, § 85.34, subsection 1, or § 85A.17, or responsible for paying indemnity insurance benefits.

Claimant was not employed under the same hours and wages as contemplated at hire when she filed her original claim for benefits effective July 2, 2017, and she was partially unemployed. Claimant's change in hours was due to the financial condition of the employer. Claimant is eligible for benefits subject to her reporting of weekly earnings.

DECISION:

The July 14, 2017 (reference 02) unemployment insurance decision is affirmed. The claimant is able to and available for work and benefits are allowed, provided she is otherwise eligible. She is required to report gross wages earned for each week of benefits claimed.

REMAND: The separation issue delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs