

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LAUREN L WHITE
Claimant

NORTHCREST INC
Employer

APPEAL 21A-UI-04882-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/19/20
Claimant: Appellant (4)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.19(38)B – Total, Partial, Temporary Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Part time, same hours and wages

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the July 21, 2020 (reference 01) unemployment insurance decision that found claimant was not eligible for unemployment benefits due to her still being employed at the same hours and same wages as her original contract of hire. The parties were properly notified of the hearing. A telephone hearing was held on April 15, 2021. The claimant participated personally. The employer was represented by hearing representative Jennifer Groenwold and participated through witnesses Rhonda Herschberger and Rashell Fowler. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records. This hearing was consolidated with Appeal No. 21A-UI-04883-DB-T.

ISSUES:

Is the claimant eligible for total, temporary or partial unemployment benefits?
Is claimant employed for the same hours and wages?
Is the claimant able to and available for work?
Is the employer's account subject to charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: An unemployment insurance benefits decision was issued on July 21, 2020 (reference 01) which found that the claimant was not eligible for unemployment insurance benefits. It was mailed to the claimant's address of record. Claimant never received the decision in the mail. Claimant received another decision dated February 2, 2021 (reference 04) finding that she was overpaid benefits and she filed her appeal on February 5, 2021.

Claimant began working for this employer on April 22, 2019. She is still employed to date. She works part-time as a dietary aide. Her hours per week fluctuate based upon business needs. The claimant was not guaranteed a certain number of hours per week when she was hired.

The claimant filed her original claim for unemployment insurance benefits effective April 19, 2020, after she was laid off from a different employer, Youth and Shelter Service (YSS) where she was a program assistant in the Kid's Club. Claimant also worked part-time hours for Performance Dance Centre.

When claimant filed her original claim for benefits, both YSS and Performance Dance Centre had temporarily closed due to the COVID-19 pandemic. Claimant continued to work her regular schedule at this employer and reported her gross weekly wages that she earned each week she filed weekly-continued claims for benefits. Claimant filed weekly-continued claims for benefits from April 19, 2020 through June 20, 2020. Claimant returned to her position at YSS after June 20, 2020. Claimant considers her employment with YSS her regular job as she earns more wages from that position. Claimant's base period wages include the following:

Employer	2019/1	2019/2	2019/3	2019/4
Youth and Shelter Service	\$1,048.00	\$1,909.00	\$2,235.00	\$1,082.00
Performance Dance Centre	\$170.00	\$140.00	\$0.00	\$198.00
Northcrest Inc	\$0.00	\$915.00	\$1,550.00	\$1,699.00

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

The first issue is whether the claimant's appeal shall be considered timely. The administrative law judge finds that it shall.

Iowa Code § 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with

benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding § 96.8, subsection 5.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Bd. of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

In this case, the claimant never received the decision in the mail due to delay by the United States postal service. Claimant immediately filed an appeal after receiving the overpayment decision. As such, the appeal shall be considered timely. The next issue is whether the claimant is eligible for partial unemployment benefits.

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", subparagraph (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)b provides:

As used in this chapter, unless the context clearly requires otherwise:

38. "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.

(emphasis added).

Iowa Code § 96.7(2)a(2)a provides:

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.

(emphasis added).

Iowa Admin. Code r. 871-23.43(4)a provides, in part:

Charging of benefits to employer accounts.

(4) Supplemental employment.

- a. An individual, who has been separated with cause attributable to the regular employer and who remains in the employ of the individual's part-time, base period employer, continues to be eligible for benefits as long as the individual is receiving the same employment from the part-time employer that the individual received during the base period. The part-time employer's account, including the reimbursable employer's account, may be relived of benefit charges

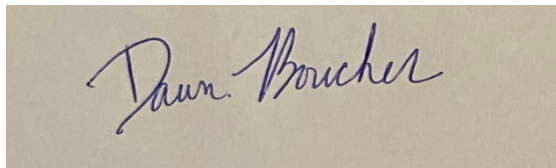
Iowa Admin. Code r. 871-24.23(26) is only meant to deny benefits in cases where it is claimed that a reduction in hours by the part-time employer at issue is what caused the partial unemployment. That is not the case here.

The claimant was laid off from her regular employer, YSS, and earned wages from this supplemental part-time employer while filing her weekly-continued claims for benefits. So long as those wages are less than her weekly benefit amount, plus fifteen dollars, claimant may be eligible for partial benefits. Because claimant has other base period wages and is currently employed part-time, she may be considered partially unemployed. Partial benefits are allowed if she is otherwise eligible. Inasmuch as the current part-time supplemental employer is offering the same wages and hours as in the base period and contemplated at hire, no benefit charges shall be made to its account.

Benefits are allowed, subject to the claimant's proper reporting of wages earned each week claims were filed, and provided the claimant remained otherwise eligible. This supplemental employer, Northcrest Inc., shall not be charged for benefits paid.

DECISION:

The appeal shall be deemed timely. The July 21, 2020 (reference 01) decision is modified in favor of the appellant. Claimant is partially unemployed and benefits are allowed, provided the claimant is otherwise eligible. The account of this supplemental employer (Northcrest Inc., account number 070301) shall not be charged.



Dawn Boucher
Administrative Law Judge

April 20, 2021
Decision Dated and Mailed

db/kmj