

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ANTONIA A ESCOTO-BERMUDEZ**

Claimant

**APPEAL 23A-UI-11746-DZ**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAUKEE COMMUNITY SCHOOL DISTRICT**

Employer

**OC: 10/29/23**

**Claimant: Appellant (2R)**

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Iowa Code § 96.4(3) – Able to and Available for Work

**STATEMENT OF THE CASE:**

Antonia A. Escoto-Bermudez, the claimant/appellant,<sup>1</sup> appealed the Iowa Workforce Development (IWD) December 5, 2023 (reference 01) unemployment insurance (UI) decision. IWD denied Ms. Escoto-Bermudez REGULAR (state) UI benefits as of October 29, 2023 because IWD concluded she was still employed with this employer in the same way she had been before she applied for UI benefits so she is not partially unemployed. On December 22, 2023, the Iowa Department of Inspections, Appeals, and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to Ms. Escoto-Bermudez and the employer for an in-person hearing at 502 East 9th Street, Des Moines, Iowa scheduled for January 9, 2024.

On January 8, 2024, the employer asked to participate in the hearing via telephone due to a scheduling conflict, and Ms. Escoto-Bermudez asked to participate in the hearing via telephone due to inclement weather. The same day, the undersigned administrative law judge granted both requests.

The administrative law judge held a telephone hearing on January 9, 2024. Ms. Escoto-Bermudez participated in the hearing personally. The employer participated in the hearing through Maggie Holton, human resources manager. The administrative law judge took official notice of the administrative record.

**ISSUE:**

Is Ms. Escoto-Bermudez able to and available for work as of October 29, 2023?

Is Ms. Escoto-Bermudez partially or temporarily unemployed as of October 29, 2023?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Escoto-Bermudez began working for the employer, a base period employer, in 2018. She works as a PRN Spanish interpreter. The employer pays her \$35.00 per hour. The employer has continuously offered Ms. Escoto-Bermudez the same pay and work since her hire date.

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<sup>1</sup> Claimant is the person who applied for UI benefits. Appellant is the person or employer who appealed.

Ms. Escoto-Bermudez also worked for employer Holmes Murphy (HMA Group Holdings LLC), another base period employer. She began working for this employer in June 2023 and she worked as a full-time bilingual receptionist. This employer paid Ms. Escoto-Bermudez \$19.00 per hour. Ms. Escoto-Bermudez's employment ended with this employer on October 27, 2023.

Ms. Escoto-Bermudez applied for UI benefits effective October 29, 2023. Ms. Escoto-Bermudez has base period wages from employer Holmes Murphy (HMA Group Holdings LLC). IWD has not issued a decision on Ms. Escoto-Bermudez's eligibility for UI benefits based on how her job ended with employer Holmes Murphy (HMA Group Holdings LLC). Ms. Escoto-Bermudez's weekly UI benefit amount is \$186.00.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes Ms. Escoto-Bermudez is partially unemployed as of October 29, 2023, and this employer is relieved of charges.

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 96.1A, subsection 37, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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 § 96.1A(37) 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) 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.

Iowa Admin. Code r. 871-24.23(26) provide:

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.

A person claiming benefits has the burden of proof that she is be able to work, available for work, and earnestly and actively seeking work.<sup>2</sup> To be able to work, "[a]n individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood."<sup>3</sup> "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides."<sup>4</sup>

In this case, Ms. Escoto-Bermudez is partially unemployed. Ms. Escoto-Bermudez was separated from her full-time job with employer Holmes Murphy (HMA Group Holdings LLC) on October 27, 2023, and she has continued working at her PRN job with the Waukee Community School District at her same hours and wages. Ms. Escoto-Bermudez is eligible for partial UI benefits as of October 29, 2023, as long as no other decision denies her UI benefits. Since this

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<sup>2</sup> Iowa Admin. Code r. 871-24.22.

<sup>3</sup> *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1).

<sup>4</sup> *Sierra* at 723.

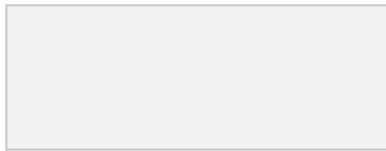
employer, Waukee Community School District, has continued to offer Ms. Escoto-Bermudez the same wages and hours, this employer's account should be relieved of charges.

**DECISION:**

The December 5, 2023 (reference 01) UI decision is REVERSED. Ms. Escoto-Bermudez is partially unemployed effective October 29, 2023. Ms. Escoto-Bermudez is eligible for UI benefits as of October 29, 2023, as long as no other decision denies her UI benefits. Employer Waukeez Community School District is relieved of charges.

**REMAND:**

The issue of Ms. Escoto-Bermudez's eligibility for UI benefits based on how her job ended with employer Holmes Murphy (HMA Group Holdings LLC) is REMANDED (sent back) to the IWD Benefits Bureau for investigation and a decision.



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Daniel Zeno  
Administrative Law Judge

January 11 2024  
Decision Dated and Mailed

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**APPEAL RIGHTS.** If you disagree with this decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board  
6200 Park Avenue Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board  
6200 Park Avenue Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.