

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHRYN R VON ROX

Claimant

APPEAL NO. 17A-UI-01336-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ARTECH INFORMATION SYSTEMS LLC

Employer

OC: 12/11/16

Claimant: Appellant (4)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.19(38)(c) – Temporarily Unemployed
Iowa Code section 96.7(2) – Employer Liability

STATEMENT OF THE CASE:

Kathryn Von Rox filed an appeal from the February 1, 2017, reference 02, decision that denied benefits effective December 11, 2016, based on the claims deputy's conclusion that Ms. Von Rox was still employed under the same hours and wages as in the original contract of hire and could not be deemed partially unemployed. After due notice was issued, a hearing was held on February 27, 2017. Ms. Von Rox participated. The employer did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate. Exhibit A was received into evidence. The administrative law judge took official notice of the following agency administrative records: KCCO, DBRO and WAGE-A.

ISSUES:

Whether the claimant was able to work and available for work during the three-week period of December 11-31, 2016.

Whether the claimant was temporarily unemployed or partially unemployed during the three-week period of December 11-31, 2016.

Whether the employer's account may be charged for benefits paid to the claimant.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Kathryn Von Rox is employed by Artech Information Systems, L.L.C., as a full-time performance and capacity analyst. Ms. Von Rox began her employment in September 2015. On December 6, 2016, the employer notified Ms. Von Rox by email that she would be furloughed for the period of December 19-30, 2016. Prior to the furlough, Ms. Von Rox last performed work for the employer on Friday, December 16, 2017. The employer recalled Ms. Von Rox to the full-time employment effective January 3, 2017. Ms. Von Rox was available to work during the two-week period of December 18-31, 2016, but the employer did not have any work available for her during that two-week period.

Ms. Von Rox established her unemployment insurance claim one week earlier than necessary. The claim was deemed effective December 11, 2016. However, Ms. Von Rox worked full-time during the week of December 11-17, 2016. When Ms. Von Rox made her claim for that week, she reported \$1,200.00 in wages and received no weekly unemployment insurance benefits. Ms. Von Rox then made timely weekly claims for the weeks ending December 24 and 31, 2016. Ms. Von Rox had no wages to report for those weeks and received \$447.00 in unemployment insurance benefits for each of those weeks. Ms. Von Rox then discontinued her claim because she had been recalled to the employment.

REASONING AND CONCLUSIONS OF LAW:

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", 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".

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).

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 96.19(38)(c).

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 evidence in the record establishes that Ms. Von Rox was employed full-time, worked full-time, and received wages for full-time work during the week of December 11-17, 2017. Because Ms. Von Rox was working full-time that week she does not meet the availability requirement applicable to unemployment insurance benefit determinations and is not eligible for benefits for that week. During the two-week period of December 18-31, 2016, Ms. Von Rox was able to work and available to perform full-time work for the employer, but the employer did not have any work for her. During that two-week period, Ms. Von Rox was furloughed. In other words, she was temporarily laid off. Ms. Von Rox is eligible for benefits for the two-week period of December 18-31, 2016, provided she meets all other eligibility requirements. Because the employer did not have the same full-time available for Ms. Von Rox during those two-weeks as has existed earlier in the employment, the employer's account may be charged for the benefits paid to Ms. Von Rox for those two weeks.

DECISION:

The February 1, 2017, reference 02, decision is modified as follows. The claimant was employed full-time during the week that ended December 17, 2016, did not meet the availability requirement during that week, and was not eligible for benefits. During the two-week period of December 18-31, 2016, the claimant was able to work, available for work, but temporarily unemployed. The claimant is eligible for benefit the benefits she received for those two weeks provided she meets all other eligibility requirements. The employer's account may be charged for the benefits paid to the claimant for those two weeks.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs