

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JANE M SAUSER
Claimant

APPEAL NO: 11A-UI-00755-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OPERATION NEW VIEW
Employer

OC: 07/04/10
Claimant: Respondent (1)

Section 96.4-3 – Able and Available
Section 96.19-38 – Partial Unemployment
Section 97.7-2-a(2) – Relief of Charges

STATEMENT OF THE CASE:

The employer appealed a department decision dated January 13, 2011, reference 02, that held the claimant is eligible for benefits beginning December 26, 2010, as she is still employed part-time or working on-call. A telephone hearing was held on March 7, 2011. The claimant participated. Joy Davis, HR Director. Administrative Assistant, participated for the employer. Employer Exhibit 1 was received as evidence.

ISSUES:

Whether the claimant is able and available for work.

Whether employer may be relieved of benefit charges

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began work for the employer as a part-time cook in the Head Start Program on September 14, 1998. Claimant is still employed as of the date of this hearing. She works six-hour days, Monday thru Friday.

The employer has a policy that requires employees to use accrued annual leave during the holiday break from December 22 thru January 4, 2011. Claimant filed an additional unemployment claim effective December 26, and she reported her \$114.00 holiday pay for December 30 & 31. The claimant did not have any annual leave to seek pay for December 26, 27 & 28. The claimant received a partial benefit of \$111.00.

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".

Iowa Code § 96.4-5-c provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

5. Benefits based on service in employment in a nonprofit organization or government entity, defined in section 96.19, subsection 18, are payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the same basis of other service subject to this chapter, except that:

c. With respect to services for an educational institution in any capacity under paragraph "a" or "b", benefits shall not be paid to an individual for any week of unemployment which begins during an established and customary vacation period or holiday recess if the individual performs the services in the period immediately before such vacation period or holiday recess, and the individual has reasonable assurance that the individual will perform the services in the period immediately following such vacation period or holiday recess.

The administrative law judge concludes claimant is eligible for benefits for the week ending January 1, 2011, as she was able and available for work, and partially unemployed.

The claimant was off work due to a holiday break period. She could not apply for vacation pay as she had no annual leave to use for three of the five days she normally would have worked during a regular work schedule period. She properly reported her holiday pay for the week and she is entitled to a partial benefit.

Iowa Code § 96.7-2-a(2) 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.

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.

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 section 96.8, subsection 5.

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 section 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 section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

Since the claimant did not work her normal schedule for the week at issue, no relief of charges is granted to the employer.

DECISION:

The department decision dated January 13, 2011, reference 02, is affirmed. The claimant is eligible for a partial benefit the week ending January 1, 2011.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs