

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KELLY S MENDEZ
Claimant

B & D SERVICES INC
Employer

APPEAL NO. 20A-UI-08923-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Appellant (4/R)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Kelly Mendez filed a timely appeal from the July 22, 2020, reference 01, decision that denied benefits for the period beginning March 15, 2020, based on the deputy's conclusion that Ms. Mendez was not partially unemployed within the meaning of the law. After due notice was issued, a hearing was held on September 11, 2020. Ms. Mendez participated. Jaime Ambrose represented the employer. Exhibits A, B and C were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A. The administrative law judge took official notice of employer Goodwill Industries of the Heartland's April 2, 2020 response to the notice of claim directed to that employer.

ISSUES:

Whether the claimant was able to work and available for work for the period beginning March 15, 2020.

Whether the claimant was partially and/or temporarily unemployed from this employer for the period beginning March 15.

Whether the employer account of B & D Services, Inc. may be charged for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Kelly Mendez established an original claim for benefits that was effective March 15, 2020. Iowa Workforce Development set her weekly benefit amount for regular benefits at \$481.00. Ms. Mendez has thus far made weekly claims for the consecutive weeks between March 15, 2020 and September 5, 2020. For the weeks that ended March 21 and March 28, 2020, Ms. Mendez reported wages and/or vacation/PTO that exceeded her weekly benefit amount by more than \$15.00. For all of the benefit weeks since March 29, 2020, Ms. Mendez's earned wages have been less than her weekly benefit amount.

Ms. Mendez has two base period employers in connection with the claim. Ms. Mendez established her claim for unemployment insurance benefits in response to being temporarily laid off from her full-time employment with Goodwill Industries of the Heartland, where she worked

as a Day Habilitation Trainer. The layoff was prompted by the Governor's March 17, 2020 Public Health Disaster Emergency proclamation in which the Governor ordered adult day centers closed to hinder community spread of COVID-19. Ms. Mendez continued to be available for recall to the full-time employment with Goodwill Industries. Goodwill Industries recently recalled Ms. Mendez to part-time, substitute employment.

Ms. Mendez's second, base period employer is B & D Services, Inc., where Ms. Mendez works as a part-time Direct Support Professional. That employer has continued to have the same, and more, work available to Ms. Mendez and has recently increased Ms. Mendez's hourly wage to \$14.44. Ms. Mendez has continued to make herself available for work with B & D and has increased her availability for work with that employer in light of being laid off from her full-time employment with Goodwill.

Ms. Mendez has at all relevant times continued to be able to work, with the exception of a partial day absence due to illness on May 23, 2020.

When Ms. Mendez first established her claim for benefits, she was unclear on whether she was supposed to report her wages from the part-time employer when she made her weekly claims. Ms. Mendez omitted wages from the part-time employer during the weeks that ended March 21, March 28, and April 4, 2020. Because her reported wages and vacation pay/PTO from the full-time employer exceeded her weekly benefit amount plus \$15.00 during the weeks that ended March 21 and March 28, omission of the part-time wages from those two weekly claims had no additional impact on her benefit eligibility. However, during the week that ended April 4, 2020, Ms. Mendez's omitted wages from the part-time employment with B & D did matter. Ms. Mendez worked 14 hours for the part-time employer that week for which she was paid \$199.00 (rounded). Ms. Mendez contacted the Benefits Bureau for clarification on the wage reporting requirement and thereafter reported all earned wages when she made her weekly claims.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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 Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23 provides, in relevant part, as follows:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

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

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.

If a claimant 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. Iowa Code section 96.7(2)(a)(2)(a).

The evidence in the record establishes that Ms. Mendez has been able to work and available for work within the meaning of the law since she established the original claim for benefits that was effective March 15, 2020. Because this part-time employer has continued to provide the same employment, the employer account of this part-time employment will not be charged for benefits. Though Ms. Mendez is not partially unemployed from this part-time employer, that does not prevent her from being eligible for benefits in connection with the layoff and partial unemployment situation related to her loss of full-time employment with Goodwill Industries. Ms. Mendez is eligible for benefits for the period beginning March 15, 2020, provided she is otherwise eligible.

This matter will be remanded to the Benefits Bureau for redetermination of Ms. Mendez's benefit eligibility for the week that ended April 4, 2020, based on her \$199.00 in wages omitted from the weekly claim for that week. The redetermination may result in an overpayment decision specific to that week.

DECISION:

The July 22, 2020, reference 01, decision is modified in favor of the claimant/appellant as follows. The claimant has been able and available for work since she established the claim for benefits that was effective March 15 2020 and is eligible for benefits effective March 15, 2020, provided she meets all other eligibility requirements. The employer account of B&D Services, Inc. will not be charged for benefits so long as that employer continues to provide the same employment as existed in the base period.

This matter is remanded to the Benefits Bureau for redetermination of the claimant's benefit eligibility for the week that ended April 4, 2020, based on her \$199.00 in wages omitted from the weekly claim for that week. The redetermination may result in an overpayment decision specific to that week.



James E. Timberland
Administrative Law Judge

September 15, 2020
Decision Dated and Mailed

jet/sam