

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DANIELLE TANNER
Claimant

SLB OF IOWA LC
Employer

APPEAL 17A-UI-08054-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/16/17
Claimant: Respondent (4)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a – Same Base Period Employment

STATEMENT OF THE CASE:

The employer filed an appeal from the July 31, 2017, (reference 03) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 25, 2017. The claimant participated personally. The employer participated through Karen Beard, human resources. Jodi Bleises, assistant manager, also testified. Employer Exhibit 1 was admitted. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Does the claimant meet the definition of being considered partially unemployed?
Is the claimant able to and available for work?

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: The claimant was hired to work full-time as an associate beginning April 27, 2017. She was guaranteed at least 38 hours and earned \$10.50 per hour. At the time of hire, the claimant's availability was open to close, Monday through Saturday, (6:00 a.m. until 9:30 p.m.) with no Sundays.

The claimant established an unemployment insurance claim effective July 16, 2017 in response to the employer reducing the claimant's hours. The claimant denied giving away available shifts, and the employer had no proof of shifts missed or given away. However, the claimant only worked 16.35 hours for the week of July 16, 2017, 32 hours for the week of July 23, 2017, and 8.48 hours for the week of July 30, 2017. The claimant did request August 4 and 5, 2017 off, but was otherwise available July 31, August 1, 3, and evening of August 2, 2017. The claimant only worked 12.13 hours on August 13, 2017. The employer had no additional details as to why the claimant's hours had been reduced.

On August 7, 2017, the claimant updated her availability, effective August 11, 2017, to reflect she was available Monday through Friday from 5:00 p.m. until 9:30 p.m., and from 6:00 a.m. to 9:00 p.m. on Saturdays. The claimant acknowledged she no longer expected full-time hours because she had accepted a full-time position at Sterzing. The request to change her availability was approved by Ms. Bleise.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was partially unemployed for the period July 16, 2017 through August 12, 2017 only. The claimant does not meet the eligibility requirements effective August 13, 2017 due to full-time employment with Sterzing.

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 § 96.19(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 Code § 96.7(2)a(2)(a), (b), and (c) 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.

(b) 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.

(c) 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.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the claimant's reduction in hours July 16, 2017 through August 12, 2017 were due to the employer, and not the claimant limiting her availability or giving away available shifts.

Because the claimant was not employed under the same hours and wages as contemplated at hire, for the period July 16, 2017 through August 12, 2017 she is considered partially unemployed, for that period only. Benefits may be allowed based upon reporting of weekly

earnings. For whatever period the employer is not offering the same wages and hours as contemplated in the contract or terms of hire, until August 13, 2017, it may be liable for benefit charges to its account. Effective August 13, 2017, the claimant voluntarily moved from full-time employment with this employer to part-time, thereby reducing her availability for hours and no longer seeking full-time hours from this employer.

The administrative law judge further concludes the claimant is not able and available effective August 13, 2017 due to full-time employment with Sterzing.

Iowa Admin. Code r. 871-24.23(16) provides:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

Iowa Admin. Code r. 871-24.23(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

Inasmuch as the claimant has voluntarily restricted her availability with this employer, to work her new full-time employment at Sterzing, the claimant no longer meets the eligibility requirements because she has removed herself from the labor market. Therefore, benefits are allowed for the period July 16, 2017 through August 12, 2017, provided the claimant is otherwise eligible, and benefits are denied effective August 13, 2017.

DECISION:

The July 31, 2017, (reference 03) unemployment insurance decision is modified in favor of the appellant. The claimant was partially unemployed and benefits for the period July 16, 2017 through August 12, 2017. Benefits are allowed for that period, provided she is otherwise eligible. She is required to report gross wages earned for each week of benefits claimed. The employer's account may be liable for charges.

Benefits are denied effective August 13, 2017, as the claimant does not meet the eligibility requirements due to full-time employment.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn