

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MICHELLE L WELTZIN-TRAINER**

Claimant

**DEER OAKS MENTAL HEALTH**

Employer

**APPEAL 19A-UI-07470-AW-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/11/19**

**Claimant: Appellant (2R)**

Iowa Code § 96.19(38)b – Definitions – Total, partial unemployment  
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search  
Iowa Code § 96.7(2)A(2) – Charges – Same base period employment  
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages

**STATEMENT OF THE CASE:**

Claimant/appellant filed an appeal from the September 12, 2019 (reference 01) unemployment insurance decision that denied benefits. A hearing was previously scheduled in this matter for October 14, 2019 at 8:00 a.m., but was rescheduled upon employer's request due to witness availability. The parties were properly notified of the hearing. A telephone hearing was held on October 29, 2019, at 8:00 a.m. Claimant participated. Employer participated through Dr. Joann Stephens, Regional Clinical Manager, and Carolyn Greening, Director of Employee Relations. Claimant's Exhibits A – C were admitted. Employer's Exhibits 1 – 2 were admitted. Official notice was taken of the administrative record.

**ISSUES:**

Whether claimant is eligible to receive partial benefits.  
Whether the claimant is able to and available for work.  
Whether claimant is still employed at the same hours and wages.  
Whether employer's account is subject to charge.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began her employment with Deer Oaks Mental Health as a full-time therapist on April 1, 2016. (Claimant Testimony) In February 2018, claimant requested a reduction in hours for personal reasons. (Greening Testimony) Employer and claimant agreed to reduce claimant to 75% of her workload at the time of hire. (Greening Testimony) Claimant had difficulty getting her notes submitted in a timely manner for the last two to three years. (Stephens Testimony) Employer addressed this issue with claimant through several counseling sessions and verbal warnings. (Stephens Testimony; Claimant Testimony) In July 2019, claimant did not enter notes for any of her sessions until the last four to five days of the month. (Stephens Testimony)

On August 1, 2019, employer unilaterally reduced claimant's work load to 10% of her workload at the time of hire. (Stephens Testimony) The reduction was due to claimant's inability to enter her notes in a timely manner. (Stephens Testimony; Claimant Testimony) Employer sent claimant a new employment contract reflecting this reduction; claimant did not sign or return the contract. (Greening Testimony; Exhibits 1 & 2) Claimant remains employed by Deer Oaks Mental Health in a part-time capacity. (Claimant Testimony)

Claimant's weekly benefit amount is \$459.00. Since August 1, 2019, the maximum amount of gross bi-monthly wages claimant has received is \$233.33. (Greening Testimony) Claimant's wages are directly related to her workload. (Claimant Testimony)

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

For the reasons that follow, the administrative law judge concludes claimant is partially unemployed effective August 1, 2019.

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. 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 difference from the contract for hire, such claimant cannot be considered partially unemployed.

Iowa Code section 96.19(38)b provides:

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.

Iowa Code section 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.

(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.

Since August 1, 2019, claimant has not been employed under the same hours and wages as agreed to by the parties when claimant's hours were first reduced in February 2018. Claimant has earned less than her weekly benefit amount plus fifteen dollars; therefore, claimant is considered partially unemployed. The reason for the reduction in hours and wages is not a factor in determining whether a claimant is partially unemployed. Benefits may be allowed based upon reporting of weekly earnings. For whatever period the employer was not offering the same wages and hours as agreed to in February 2018, Employer may be liable for benefit charges to its account. The issue of whether claimant properly reported her wages will be remanded to the Benefits Bureau for an initial investigation and determination.

**DECISION:**

The September 12, 2019 (reference 01) unemployment insurance decision is reversed. Claimant was partially unemployed and benefits are allowed, provided she is otherwise eligible. Claimant is required to report gross wages earned for each week of benefits claimed. Employer's account may be liable for charges.

**REMAND:**

The issue of whether claimant has properly reported her wages is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

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Adrienne C. Williamson  
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Decision Dated and Mailed

acw/scn