

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**BECKY L SMITH**  
Claimant

**APPEAL NO. 19A-UI-01517-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FIRST RESOURCES CORPORATION**  
Employer

**OC: 01/06/19**  
**Claimant: Respondent (1)**

Section 96.19-38-a & b – Total and Partial Unemployment  
Section 96.7-2-a(2) – Same Base Period Employment  
871 IAC 24.22(2)f – Part-Time Worker – Able and Available

**STATEMENT OF THE CASE:**

First Resources Corporation (employer) appealed a representative's February 11, 2019, decision (reference 02) that concluded Becky Smith (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 6, 2019. The claimant participated personally. The employer participated by Humphrey Mwangi, Director of Human Resources; Jennifer Huber, Behavioral Health Intervention Services Supervisor/Intensive Psychiatric Rehabilitation Supervisor; and Lindsay Paxton, Director of Mental Health. The employer offered and Exhibit 1 was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on November 9, 2017, as a full-time intensive psychiatric rehabilitation practitioner. She saw clients who were adults with chronic mental illness who voluntarily chose to see her. The employer assigned her a few clients and she had to find other clients in her community. The claimant went to locations, talked to people, and left pamphlets. She did everything in her power to get clients/business for the employer.

On October 17, 2018, the employer notified the claimant that she was "failing to meet her job responsibilities" because, in part, she was not seeing clients as many hours as possible and not maximizing her hours. She did her best but she could not force clients to appear for services. After October 17, 2018, the claimant visited various places trying to find clients for the employer. She asked for help from her supervisor and the supervisor suggested places to seek clients.

On November 19, 2018, the employer gave the claimant an Employee Disciplinary Action Notice with a box checked that said "lay off/reduction/change in job" because she did not meet her required service hours. The employer did not know whether the lack of service hours was a

result of client illness, client refusal to appear for treatment, or some other reason. The employer indicated that work was available for the claimant but it reserved the right to give her hours away to other employees. The employer made the claimant a part-time worker effective November 26, 2018.

As a result of the reduction of hours, the claimant filed for partial unemployment insurance benefits with an effective date of January 6, 2019, and reported her wages to the department. Her weekly benefit amount was \$375.00. She continued to work as a part-time intensive psychiatric rehabilitation practitioner until February 4, 2019. During her employment, the employer did not send her new clients. The claimant continued to reach out to churches, food banks, and client bases. The employer gave away one client base the claimant found to another employee. The claimant remained able and available for full-time work.

The claimant quit working for the employer to take other part-time employment. She continues to actively seek full-time employment. A representative's February 19, 2019, decision (reference 03), stated the claimant left employment for the sole purpose of accepting employment with a new employer and the claimant did perform services for the new employer. The decision went on to say that the employer would not be charged for benefits paid.

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

For the reasons that follow, the administrative law judge concludes the claimant is partially unemployed.

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 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.

Iowa Admin. Code r. 871-24.22(2)f 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.

f. Part-time worker, student--other. Part-time worker shall mean any individual who has been in the employ of an employing unit and has established a pattern of part-time regular employment which is subject to the employment security tax, and has accrued wage credits while working in a part-time job. If such part-time worker becomes separated from this employment for no disqualifiable reason, and providing such worker has reasonable expectation of securing other employment for the same number of hours worked, no disqualification shall be imposed under Iowa Code section 96.4(3). In other words, if an individual is available to the same degree and to the same extent as when the wage credits were accrued, the individual meets the eligibility requirements of the law.

From January 6, 2019, until the week ending February 2, 2019, the claimant was working for the employer in less than her agreed upon full-time capacity. She was able and available for work. The claimant's reported wages were less than her weekly benefit amount plus fifteen dollars. Benefits are allowed, provided the claimant is otherwise eligible. The employer's account is subject to charge for this period.

From February 3, 2019, the claimant was able and available for work. She was separated from her regular job and earning less than her weekly benefit amount plus fifteen dollars. Benefits are allowed, provided the claimant is otherwise eligible. The employer's account is not subject to charge after February 3, 2019, due to the representative's February 19, 2019, decision (reference 03). Benefits paid after February 3, 2019, will be charged to the unemployment compensation fund.

**DECISION:**

The representative's February 11, 2019, decision (reference 02) is affirmed. The claimant is able and available for work and partially unemployed. From January 6, 2019, until the week ending February 2, 2019, benefits are allowed, provided the claimant is otherwise eligible. The employer's account is subject to charge for this period. From February 3, 2019, benefits are allowed, provided the claimant is otherwise eligible. Benefits paid after February 3, 2019, will be charged to the unemployment compensation fund.

---

Beth A. Scheetz  
Administrative Law Judge

---

Decision Dated and Mailed

bas/rvs