

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CHANDRA L HAYES
Claimant

APPEAL 17A-UI-03337-DG-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HILTON WORLDWIDE INC
Employer

**OC: 02/26/17
Claimant: Appellant (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:

Claimant filed an appeal from a decision of a representative dated March 21, 2017, (reference 01) that held claimant not able to and available for work. After due notice, a hearing was scheduled for and held on April 20, 2017. Claimant participated personally. Employer participated by Michelle Miller, Manager. Claimant's Exhibit A was admitted into evidence.

ISSUE:

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 currently works for employer as a part-time banquet server. From May 31, 2016 through February 1, 2017, it did have 20 to 30 hours of work available for the claimant as contemplated in the original contract of hire.

Claimant is pregnant and was given lifting restrictions in early February, 2017, but she was still able to work and perform the job functions required for her position with employer. Claimant's restrictions also limited her working to 24 hours each week which was consistent with the hours she was working prior to February, 2017.

Beginning on February 10, 2017 claimant's hours were reduced to approximately 6 hours a week. Claimant was able to perform her normal job duties through April 5, 2017, but she was offered less hours by employer. On April 6, 2017 claimant was placed on bed rest restrictions and was unable to work at that time. Claimant is pregnant with twins, and will be unable to work through the rest of her pregnancy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is partially unemployed beginning on February 26, 2017 through April 1, 2017. She is not able to work or available to work beginning on April 2, 2017.

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 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 section 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. 871-23.43(4)a provides, in part:

(4) *Supplemental employment.*

a. An individual, who has been separated with cause attributable to the regular employer and who remains in the employ of the individual's part-time, base period employer, continues to be eligible for benefits as long as the individual is receiving the same employment from the part-time employer that the individual received during the base period. The part-time employer's account, including the reimbursable employer's account, may be relieved of benefit charges.

Because the claimant was not employed under the same hours and wages as contemplated at hire, she is considered partially unemployed beginning on February 26, 2017 through April 1, 2017. Benefits may be allowed based upon reporting of weekly earnings during those dates.

Claimant is not available for work or able to work for the week beginning April 2, 2017. Claimant should report her availability to work to the employer and the department once she is released back to work without restrictions that would prevent her from performing her normally assigned work duties.

DECISION:

The March 21, 2017, (reference 01) decision is modified in favor of the appellant. The claimant is partially unemployed and benefits are allowed, provided she is otherwise eligible beginning on February 26, 2017 through April 1, 2017. She is required to report gross wages earned for each week of benefits claimed during that period. The employer's account may be liable for charges during those dates. Claimant is not available for work or able to work beginning on April 2, 2017. Claimant should report her availability to work to her employer and the department once she is released back to work without restrictions that would limit her ability to perform required work-related tasks for the employer.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

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