

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TANYA L PERKINS
Claimant

WT SIOUX LLC
Employer

APPEAL 22A-UI-08001-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/06/22
Claimant: Respondent (1)**

Iowa Code § 96.4(3) – Able and Available
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Part time, same hours and wages
Iowa Code § 96.1A(37)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a – Same Base Period Employment

STATEMENT OF THE CASE:

On March 24, 2022, the employer/appellant filed an appeal from the March 21, 2022, (reference 02) unemployment insurance decision that allowed benefits based on claimant being employed for the same hours and wages. The employer's account was not subject to charge for the benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 10, 2022. Claimant did not call in to participate. Employer participated through Human Resources Associate, Sarah Mazziotti. Administrative notice was taken of claimant's unemployment insurance benefits records.

ISSUES:

- I. Does the claimant meet the definition of being considered partially, totally, or temporarily unemployed?
- II. Is claimant employed for the same hours and wages?
- III. Is the claimant able to work and available for work?
- IV. Is the employer's account subject to charge?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on June 14, 2021. Claimant was hired as a part-time crewmember. Claimant's was not guaranteed a certain number of hours and the hours she worked varied. Claimant earned \$11.50 an hour.

On March 6, 2022, claimant filed for state unemployment insurance benefits. Claimant was working more hours with the employer during this time. For the time period of February 21, 2022-

March 6, 2022, claimant worked 28.9 hours. For the time period of March 7, 2022 through March 20, 2022, claimant worked 30.15 hours. Claimant's hours and wages did not decrease. Claimant filed for benefits the weeks ending March 12, 2022 and March 19, 2022. (DBRO).

Claimant separated from the employer on April 9, 2022. A decision has not been issued on the separation.

Based on claimant's wage history it appears she was employed with another employer while she was working part-time with this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not partially, totally, or temporarily, unemployed effective March 6, 2022.

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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Code § 96.1A(37) 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 Iowa Admin. Code r. 871-23.43(4)a provides in part:

(3) 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....

(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 § 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 § 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 § 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 § 85.33, § 85.34, subsection 1, or § 85A.17, or responsible for paying indemnity insurance benefits.

Because the claimant has other base-period wages and was employed part-time when she filed for benefits she may be considered partially unemployed. Partial benefits may be allowed if she is otherwise eligible. Inasmuch as the current part-time employer is offering the same wages and hours as contemplated at hire, no benefit charges shall be made to its account.

DECISION:

The March 21, 2022, (reference 02) unemployment insurance decision is AFFIRMED. The claimant is partially unemployed and benefits are allowed, provided she is otherwise eligible. The account of the part-time employer, WT Sioux, LLC (account number 628308-000) shall not be charged.



Carly Smith
Administrative Law Judge

May 31, 2022
Decision Dated and Mailed

cs/kmj