

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARISELA GUTIERREZ DE GOMEZ
Claimant

PARCO LTD
Employer

APPEAL 20A-UI-05644-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20
Claimant: Respondent (1)

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work
PL 116-136 Section 2104 (B) – Federal Pandemic Unemployment Compensation
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Code § 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Parco (employer) appealed a representative's June 4, 2020, decision (reference 01) that concluded Marisela Gutierrez de Gomez (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 held on June 29, 2020. The claimant did not provide a telephone number and, therefore, did not participate in the hearing. The employer participated by Juliet Diaz, Human Resources Manager. The administrative law judge took official notice of the administrative file.

ISSUES:

The issue is whether the claimant is eligible for total or partial unemployment benefits, still employed at the same hours and wages, whether the claimant is able and available for work and/or whether the employer's account is subject to charge.

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 July 29, 2013, as a full-time crew chief. On April 5, 2020, the employer sent the claimant home because her husband was exposed to Covid-19. The claimant had no symptoms. The employer allowed her to return on April 20, 2020. The employer did not have work available for the claimant or pay the claimant from April 5, 2020, through April 19, 2020.

The claimant filed for unemployment insurance benefits with an effective date of April 5, 2020. Her weekly benefit amount was determined to be \$235.00. The claimant filed a weekly claim for the week ending April 11, 2020, and mistakenly reported \$347.00 in earnings. She received no unemployment insurance benefits for the week ending April 11, 2020. She filed a weekly claim

for the week ending April 18, 2020, and reported no earnings. She received \$235.00 in unemployment insurance benefits and \$510.00 in Federal Pandemic Unemployment Compensation for the week ending April 18, 2020.

REASONING AND CONCLUSIONS OF LAW:

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.

In this case, the claimant is temporarily unemployed due to a short-term layoff. The employer suspended the claimant from work status, without pay due to an emergency. So the issue is whether she was able to and available for work.

Iowa Code section 96.4(3) provides:

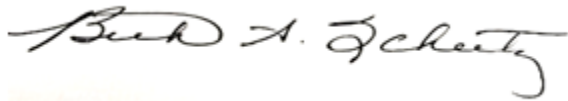
An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

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".

There was no evidence that there were any restrictions or limitations on employability, except for what the employer imposed. The employer had no work available for claimant. Accordingly, benefits are allowed.

DECISION:

The June 4, 2020, (reference 01) unemployment insurance decision is affirmed. The claimant is eligible to receive unemployment insurance benefits for the two-week period ending April 18, 2020. The claimant's unemployment was due to a short-term layoff.



Beth A. Scheetz
Administrative Law Judge
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July 13, 2020
Decision Dated and Mailed

bas/sam