

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MELISSA K POPPE
Claimant

YOUNG MENS CHRISTIAN ASSOCIATION
Employer

APPEAL 21A-UI-06997-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 03/29/20
Claimant: Respondent (4R)

Iowa Code § 96.1A(37) – 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
Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Admin. Code r. 871-24.35 – Filing

STATEMENT OF THE CASE:

Employer filed an appeal from the February 25, 2021 (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on May 18, 2021, at 10:00 a.m. Claimant participated. Employer participated through Amy Goodwin, Director of Human Resources. Claimant's Exhibits A – D were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether employer filed a timely appeal.
Whether claimant is totally, partially or temporarily unemployed.
Whether 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 the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to employer at the correct address on February 25, 2021. Employer received the decision on March 8, 2021. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by March 7, 2021. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day. March 7, 2021 was a Sunday; therefore, the appeal deadline was extended to Monday, March 8, 2021. Employer appealed the decision via email on March 8, 2021. Employer's appeal was received by Iowa Workforce Development on March 9, 2021.

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began employment with Young Men's Christian Association on August 6, 2018. Claimant is a

part-time Member Service Representative, working an average of 15 hours per week. Employer closed due to Covid-19 pursuant to the governor's mandate from March 17, 2020 through May 17, 2020. Claimant performed no work for employer from March 17, 2020 through May 17, 2020, because employer had no work available. Employer reopened May 18, 2020 and recalled claimant to work. Claimant returned to work May 21, 2021 but worked fewer than her regular hours because employer did not have work available. Claimant resumed working her regular hours in June 2020. Claimant filed an initial claim for unemployment insurance benefits effective March 29, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes employer's appeal was timely.

Iowa Code § 96.6(2) provides, in pertinent part: "[u]nless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision."

Iowa Admin. Code r. 871-24.35(1) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

(a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

(b) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

Employer submitted its appeal on the date of the appeal deadline. The agency did not receive the decision until the following day due to agency error. Employer's appeal is considered timely.

The next issues to be determined are whether claimant was totally, partially or temporarily unemployed, whether claimant was able to and available for work, whether claimant was still employed at the same wage and hours and whether employer's account is subject to charge. For the reasons that follow, the administrative law judge concludes:

Iowa Code section 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 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 96.1A, subsection 37, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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 96.7(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.

From March 29, 2020 until May 16, 2020, claimant performed no work and received no wages because employer was closed and had no work available for claimant. Therefore, claimant was totally unemployed and is eligible for benefits. Benefits are allowed from March 29, 2020 until May 16, 2020, provided claimant is otherwise eligible.

From May 17, 2020 until June 6, 2020, claimant was not employed under the same hours and wages as contemplated at hire. Because claimant was working fewer than her regular hours, claimant may be considered partially unemployed. Benefits are allowed from May 17, 2020 until June 6, 2020, provided claimant is otherwise eligible and subject to claimant reporting wages earned.

The issue of whether the employer will be charged for regular, state-funded unemployment insurance benefits paid due to Covid-19 will be remanded to the Tax Bureau of Iowa Workforce Development for a determination in accordance with the agency's announcement that it would not charge employers for benefits paid due to Covid-19.

DECISION:

Employer's appeal was timely. The February 25, 2021 (reference 01) unemployment insurance decision is modified in favor of appellant. Claimant was totally unemployed from March 29, 2020 until May 16, 2020; benefits are allowed provided claimant is otherwise eligible. Claimant was partially unemployed from May 17, 2020 until June 6, 2020; benefits are allowed provided claimant is otherwise eligible and subject to claimant reporting wages earned.

REMAND:

The issue of whether employer should be charged for the unemployment insurance benefits paid to claimant because of Covid-19 is remanded to the Tax Bureau of Iowa Workforce Development for a determination.



Adrienne C. Williamson
Administrative Law Judge
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May 25, 2021
Decision Dated and Mailed

acw/kmj