

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JULIE TOMKINS

Claimant

APPEAL 21A-UI-01400-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DUBUQUE-HOLY FAMILY CATHOLIC

Employer

OC: 03/29/20

Claimant: Appellant (4/R)

Iowa Code § 96.1A(37) – Total and Partial Unemployment
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
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 § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

Julie Tomkins (claimant) appealed a representative's December 3, 2020, decision (reference 01) that denied benefits based on her continued employment with Dubuque-Holy Family Catholic (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 18, 2021. The claimant participated personally. The employer was represented by Paul Jahnke, Hearing Representative, and participated by Mary Sulentic. 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 worked for the employer since July 2, 2007. She is currently a full-time preschool teacher and early childcare associate. Due to Covid-19, the employer needed to reduce staff in April 2020. It had a plan to alternate weeks or two weeks of work.

The claimant filed for unemployment insurance benefits with an effective date of March 29, 2020. Her weekly benefit amount (WBA) was determined to be \$334.00. The employer did not have work for the claimant for the two weeks ending April 18, 2020, the week ending May 9, 2020, and the week ending May 23, 2020.

For the week ending April 25, 2020, the claimant reported to the Agency that she received wages of \$310.00. She received \$107.00 in unemployment insurance benefits. The employer

actually paid her \$386.00 in wages for that week. For the week ending May 2, 2020, the claimant reported to the Agency that she received wages of \$212.00. She received \$205.00 in unemployment insurance benefits. The employer actually paid her \$288.00 in wages for that week.

The claimant received benefits from April 11, 2020, to the week ending May 23, 2020. This is a total of \$1,648.00 in state unemployment insurance benefits after March 29, 2020. She also received \$3,600.00 in Federal Pandemic Unemployment Compensation for the six-week period ending May 23, 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.

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", subparagraph (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".

When an employer has a lack of work for a period not to exceed four consecutive weeks, the claimant is considered to be temporarily unemployed. The claimant was temporarily unemployed for the two weeks ending April 18, 2020, the week ending May 9, 2020, and the

week ending May 23, 2020. She is eligible for unemployment insurance benefits for those four weeks.

For the two weeks ending May 2, 2020, the claimant was employed and filing for unemployment insurance benefits. She cannot be considered totally or temporarily unemployed. The issue becomes whether she was partially unemployed. For a worker to be partially unemployed, she must be earning less than her WBA plus \$15.00.

For the week ending April 25, 2020, the claimant earned wages of \$386.00. This was greater than \$349.00, her WBA plus \$15.00. The claimant was not partially unemployed. She was not monetarily eligible for unemployment insurance benefits for the week ending April 25, 2020.

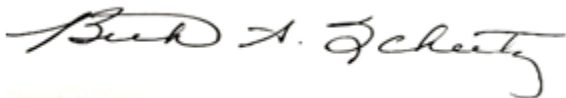
For the week ending May 2, 2020, the claimant earned \$288.00. This was less than \$349.00 but more than the claimant reported to the agency. The claimant was partially unemployed for the week ending May 2, 2020. The claimant's calculated partial payment for the week ending May 2, 2020, should be \$129.00 rather than \$205.00.

The issue of whether claimant has been overpaid unemployment insurance benefits is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

DECISION:

The December 3, 2020, (reference 01) unemployment insurance decision is modified in favor of the appellant. The claimant is eligible for temporary unemployment insurance benefits for the two weeks ending April 18, 2020, the week ending May 9, 2020, and the week ending May 23, 2020. She is eligible for partial unemployment insurance benefits for the week ending May 2, 2020. Benefits are allowed, provided the claimant is otherwise eligible.

The issue of whether claimant has been overpaid unemployment insurance benefits is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.



Beth A. Scheetz
Administrative Law Judge
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March 1, 2021
Decision Dated and Mailed

bas/lj