

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JESSICA L MUDRA
Claimant

STTG, L.L.C.
Employer

APPEAL 20A-UI-09688-AD-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/17/20
Claimant: Respondent (4R)

Iowa Code § 96.19(38) – Total, partial unemployment
Iowa Code § 96.7(2)a(2) – Charges – Same base period employment

STATEMENT OF THE CASE:

On August 14, 2020, STTG, L.L.C. (employer/appellant) filed a timely appeal from the August 4, 2020 (reference 01) unemployment insurance decision that allowed benefits effective May 17, 2020 based on a finding claimant was able and available for work.

A telephone hearing was held on September 28, 2020. The parties were properly notified of the hearing. Jessica Mudra (claimant/respondent) did not register a number for the hearing and did not participate. Employer participated by owner Tim TeGrootenhuis.

Employer's Exhibit 1. Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the claimant totally, partially, or temporarily unemployed?
- II. Is the claimant able to and available for work?
- III. Is the claimant still employed at the same hours and wages? Is the employer's account subject to charge? Is the claimant an on-call worker?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant began working for employer on January 12, 2020. Claimant is still employed by employer. Claimant is employed part-time as a shift manager. Claimant began working for employer as team member and was then promoted to shift manager in July. There is no guarantee of certain hours in the position. Her pay has not decreased.

Claimant was also employed full-time for another employer around the same time. She was separated from that employment at some point and appears to have filed for benefits based on that separation. Claimant has filed claims but not reported wages from the benefit week ending

July 25, 2020 and continuing through the benefit week ending September 12, 2020. Claimant was employed by employer and earning wages during this time. Claimant was earning less than her weekly benefit amount plus \$15.00 in each of these weeks.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the August 4, 2020 (reference 01) unemployment insurance decision that allowed benefits effective May 17, 2020 based on a finding claimant was able and available for work is MODIFIED in favor of appellant. Claimant separated from her full-time employer but is receiving the same employment from her part-time employer. Claimant is therefore partially unemployed and employer shall not be charged.

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) 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.

Claimant separated from her regular employment at some point and appears to have filed for benefits based on that separation. Claimant has filed claims but not reported wages from the benefit week ending July 25, 2020 and continuing through the benefit week ending September 12, 2020. Claimant was employed by employer and earning wages during this time. Claimant was earning less than her weekly benefit amount plus \$15.00 in each of these weeks. Claimant is therefore partially unemployed. Employer shall not be charged for benefits paid, as she is receiving the same employment from employer as during the base period.

DECISION:

The August 4, 2020 (reference 01) unemployment insurance decision that allowed benefits effective May 17, 2020 based on a finding claimant was able and available for work is MODIFIED in favor of appellant. Claimant separated from her full-time employer but is receiving the same employment from her part-time employer. Claimant is therefore partially unemployed and employer shall not be charged.

REMAND:

This matter is remanded for an investigation and decision regarding whether claimant has been overpaid benefits based on her apparent failure to report wages earned during each week claimed.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

September 29, 2020
Decision Dated and Mailed

abd/scn