

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ABBIE CHALK
Claimant

PERKINS LLC
Employer

APPEAL NO. 22A-UI-06722-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/09/22
Claimant: Respondent (1)**

Iowa Admin. Code r. 871-24.23(26) – Part-Time Worker – Same Wages and Hours
Iowa Code § 96.4-3 – Able and Available
Iowa Code § 96.7(2)A(2) – Partial Benefits
Iowa Code § 96.19(38) – Total and Partial Unemployment
871 IA Admin. Code – 24.22(2)(I) – On Call Worker

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated March 2, 2022, reference 01, which held claimant able and available for work. After due notice, a hearing was scheduled for and held on April 26, 2022. Claimant participated personally. Employer participated by Jason Titlbach.

ISSUES:

Whether claimant is still employed at the same hours and wages?

Whether claimant is eligible to receive partial benefits?

Whether claimant is able and available for work?

FINDINGS OF FACT:

The claimant currently works for Perkins, a base period employer, part time as a server for employer. Claimant worked on a schedule with hours limited from 8am to 2pm such that she could work while her child was in daycare. Employer complied with this scheduling request for an extended period of time, but then began reducing claimant's set hours of work. Claimant went from approximately 20 hours a week of work that she'd worked for a number of years to around four hours a week. It was after this reduction of hours that claimant filed for unemployment benefits.

Claimant stated that she remained able to work the previously established hours, had they been available for her. Employer stated that during the slow time of the year over the winter that available hours are reduced. Employer did not state a reason why claimant's hours were reduced to the extent that they were.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was partially unemployed for the dates of January 23, 2022 through February 19, 2022.

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".

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)(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 section 96.8, subsection 5.

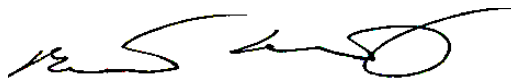
(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who 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.

Because the claimant was available to work the same hours she'd established over the course of years and employer chose to reduce claimant's established hours, claimant is considered to be partially unemployed for the period of January 23, 2022 through February 19, 2022. Benefits are allowed for that period.

DECISION:

The March 2, 2022, reference 01, decision is affirmed. The claimant was partially unemployed for the period of January 23, 2022 through February 19, 2022 and benefits are allowed, provided claimant is otherwise eligible.



Blair A. Bennett
Administrative Law Judge

May 5, 2022
Decision Dated and Mailed

bab/scn