

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

SARAH J MAURER
Claimant

APPEAL NO: 12A-UI-07257-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

MAINSTREAM LIVING INC
Employer

OC: 05/20/12
Claimant: Respondent (1)

Section 96.4-3 – Able and Available
Section 96.19-38 – Partial Unemployment
Section 96.7-2-a – Relief of Charges

STATEMENT OF THE CASE:

The employer appealed a department decision dated June 13, 2012, reference 01, that held she is still employed part-time available for work as of May 20, 2012, and benefits are allowed. A telephone hearing was held on July 12, 2012. The claimant participated. Carissa Lewis, HR Director; Traci Miner, Program Administrator; and Robin Brown, Team Leader, participated for the employer. Employer Exhibits 1 -6 was received as evidence.

ISSUES:

The issue is whether the claimant is able and available for work.

The issue is whether the claimant is partially unemployed.

The issue is whether the employer may be relieved of benefit charges.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant began working for her employer as a part-time support living technician on January 31, 2011. She achieved full-time employment status on May 1. A full-time employee works 40 hours a week and part time is considered 35 or less.

The employer issued claimant a disciplinary demotion effective May 20, 2012. She was demoted from full-time to part-time status and moved to different work location. While she had been working as many as 40 hours a week, she began getting about 26 hours that has recently increased to 33 and 38 due to claimant working additional work shifts for co-workers.

REASONING AND CONCLUSIONS OF LAW:

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, 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.

An individual shall be deemed partially unemployed in any week in which 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.

The administrative law judge concludes that the claimant is able and available for part-time work effective May 20, 2012, and she is partially unemployed due to her removal from full-time work status.

While the employer has the right to demote claimant from full-time to part-time status, as long as claimant is working less than full-time hours and makes herself available for all scheduled hours, she meets the availability requirements of the law.

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.

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.

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.

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.

The administrative law judge further concludes the employer is not granted a relief of benefit charges because claimant is not currently receiving the same employment now as she was during her employment based period (1/1/2011 thru 12/31/11). Claimant worked as a full-time employee during the majority of her base period and is currently on part-time status.

DECISION:

The department decision dated June 13, 2012, reference 01, is affirmed. The claimant is eligible for partial unemployment benefits effective May 20, 2012, as she meets the availability requirements of the law.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

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