

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**BURGANDIE L ALDRIDGE**  
Claimant

**LUTHERAN SERVICES IN IOWA INC**  
Employer

**APPEAL 17A-UI-07168-NM-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/25/17**  
**Claimant: Appellant (4R)**

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Iowa Code § 96.19(38)b – Partial Unemployment  
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:**

The claimant filed an appeal from the July 14, 2017, (reference 02) unemployment insurance decision that denied benefits because she was working enough hours to have removed herself from the labor market. The parties were properly notified of the hearing. A telephone hearing was held on August 2, 2017. The claimant participated and testified. The employer participated through manager Kelly Wagner. Employer's Exhibits 1 through 3 were received into evidence. Official notice was taken of claimant's wage records.

**ISSUES:**

Is the claimant partially unemployed and available for work?  
If so, is the employer's account liable for potential charges?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant currently works for Lutheran Services in Iowa, a base period employer, part-time under the same terms and conditions as contemplated at hire. (Exhibits 1 through 3). Claimant is an occasional respite care provider and works according to the needs of the family she serves. When claimant does work, she only works on weekends. The maximum number of hours claimant can work in a given month is 88 hours, but her actual hours worked vary from week to week. Claimant also has potentially qualifying wages from D & G Inc. (account number 070276-000) and Dolgencorp LLC (account number 364438-000) in the base period history. Claimant testified she is able to and available for work during the regular Monday through Friday work week and on weekends she is not providing respite care. Claimant also testified she has been performing at least two work searches each week to find such a position.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant is partially unemployed and this part-time employer is relieved of benefit charges.

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.

Claimant provided credible testimony that she is working a maximum on 88 hours per month on an as-needed basis, but some weeks does not work at all. Claimant further testified, in her prior employment, she had worked Monday through Friday hours and is currently available to work those hours and weekends she does not provide respite care. Because the claimant has other base-period wages and is currently employed part-time, she may be considered partially unemployed. Partial benefits may be allowed if she is otherwise eligible. Inasmuch as the current part-time employer is offering the same wages and hours as contemplated at hire, no benefit charges shall be made to its account.

**DECISION:**

The July 14, 2017, (reference 02) unemployment insurance decision is modified in favor of the appellant. The claimant is partially unemployed and benefits are allowed, provided she is otherwise eligible. The account of the current part-time employer (account number 069787-000) shall not be charged. The benefits withheld shall be paid to claimant, provided she is otherwise eligible. Claimant should report gross wages for the weeks in which they are earned for the purpose of establishing continuing eligibility for partial unemployment benefits.

**REMAND:**

The monetary eligibility issue from the base period wage history as delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs