

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

NICOLE L WULF
Claimant

APPEAL NO. 18A-UI-05842-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOOD SAMARITAN SOCIETY INC
Employer

OC: 04/22/18
Claimant: Appellant (1)

Iowa Code section 96.4(3) – Able & Available
Iowa Code Section 96.19(38)(b) – Partially Unemployed
Iowa Code Section 96.19(38)(c) – Temporarily Unemployed
Iowa Code section 96.7(2) – Employer Liability

STATEMENT OF THE CASE:

Nicole Wulf filed a timely appeal from the May 21, 2018, reference 01, decision that denied benefits effective April 22, 2018, based on the Benefits Bureau deputy's conclusion that Ms. Wulf was not partially unemployed within the meaning of the law. After due notice was issued, a hearing was held on June 13, 2018. Ms. Wulf participated. Steven Shell represented the employer. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, and WAGE-A.

ISSUES:

Whether Ms. Wulf has been able to work and available for work since she established the original claim for benefits that was effective April 22, 2018.

Whether Ms. Wulf has been partially unemployed since she established the original claim for benefits that was effective April 22, 2018.

Whether Ms. Wulf has been temporarily unemployed since she established the original claim for benefits that was effective April 22, 2018.

Whether the employer's account may be assessed for benefits paid to Ms. Wulf.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Nicole Wulf established an original claim for unemployment insurance benefits that was effective April 22, 2018. Iowa Workforce Development set Ms. Wulf's weekly benefit amount at \$490.00. Ms. Wulf's base period for purposes of the claim year that began April 22, 2018 consists of the four calendar quarters of 2017. Ms. Wulf had three base period employers: Good Samaritan Society, Inc., CP, Inc. and Check Enterprises Iowa, Inc. The latter two named base period employers are tax preparation businesses. Ms. Wulf most recently performed work for CP, Inc.,

d/b/a/ H & R Block during the second quarter of 2017. Ms. Wulf commenced her employment with Check Enterprises Iowa, Inc. at the end of November 2017 and last performed work for that employer on April 17, 2018, at which time she was laid off in connection with the tax season coming to an end. Ms. Wulf hopes to return to the employment at the start of the next tax season.

Ms. Wulf has been employed by Good Samaritan Society, Inc. as a part-time Licensed Practical Nurse since 2009. Ms. Wulf continues in that part-time Good Samaritan employment under the same conditions, including work hours and wages, as existed during the base period. Ms. Wulf works the overnight shift, 6:00 p.m. to 6:00 a.m. Ms. Wulf generally works one or two shifts per week at Good Samaritan. Ms. Wulf's base wage at Good Samaritan is \$22.76.

When Ms. Wulf applied for unemployment insurance benefits, she reported that she was attached to an employer and, therefore, was categorized as a group 3, job-attached claimant. Ms. Wulf had made a weekly claim for benefits since she established the original claim. Because Ms. Wulf reported that she was job-attached, the Internet-based weekly claim reporting system has not prompted Ms. Wulf to report weekly job contacts. However, Ms. Wulf has not looked for other employment since she established her claim. Instead, Ms. Wulf has foregone a job search in favor of waiting to be recalled to Check Enterprises Iowa, Inc. toward the end of the 2018.

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 Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment

insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

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. Iowa Code Section 96.19(38)(b).

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 96.19(38)(c).

Iowa Code section 96.7(1) and (2) provides, in relevant part, as follows:

Employer contributions and reimbursements.

1. Payment. Contributions accrue and are payable, in accordance with rules adopted by the department, on all taxable wages paid by an employer for insured work.

2. Contribution rates based on benefit experience.

a. (1) The department shall maintain a separate account for each employer and shall credit each employer's account with all contributions which the employer has paid or which have been paid on the employer's behalf.

(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.

[Emphasis added.]

The evidence in the record establishes that Ms. Wulf has not been partially unemployed since she established her claim for benefits. Throughout the claim period, Ms. Wulf had remained attached to the part-time Good Samaritan employment under the same conditions as existed in her claim year. Accordingly, Ms. Wulf would not be eligible for benefits under a theory of partial unemployment.

The weight of the evidence establishes that Ms. Wulf has not been temporarily unemployed since she established her original claim for benefits. At the time Ms. Wulf was laid off from the Check Enterprises Iowa, Inc. employment on April 17, 2018, she understood that there would be no hope of recall to that employment until November or December 2018. In other words, she understood that she would be laid off for at least seven months before there would be any hope of recall. A layoff planned for that length of time cannot be deemed temporary within the

meaning of the law. Ms. Wulf is not eligible for benefits under the theory that she is temporarily unemployed.

Iowa Admin. Code r. 871-24.23(20) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(20) Where availability for work is unduly limited because the claimant is waiting to be recalled to work by a former employer or waiting to go to work for a specific employer and will not consider suitable work with other employers.

The weight of the evidence establishes that Ms. Wulf has not been available for work within the meaning of the law since she established her claim for benefits. Despite being a Licensed Practical Nurse and despite being an experienced tax return preparer, Ms. Wulf has foregone a search for new employment to replace the Check Enterprises Iowa, Inc. employment and has instead elected to simply wait to be recalled to Check Enterprises Iowa, Inc. Because Ms. Wulf has unduly restricted her availability for work since she established her original claim for benefits, benefits are denied effective April 22, 2018.

DECISION:

The May 21, 2018, reference 01, decision is affirmed. The claimant has not been partially unemployed since she established her original claim for benefits and is not eligible for benefits under a theory of partial unemployment. The employer account of Good Samaritan Society, Inc. will not be charged for benefits paid to the claimant so long as she continues in the employment under the same conditions. The claimant has not been temporarily unemployed within the meaning of the law since she established her claim for benefits and is not eligible for benefits under a theory that she is temporarily unemployed. The claimant has unduly restricted her availability for work since she established her claim for benefits and, therefore, has not met the availability requirement since she established the claim. Benefits are denied effective April 22, 2018. The availability requirement continued as of the June 13, 2018 appeal hearing. If the claimant hopes to become eligible for unemployment insurance benefits, she must demonstrate availability for work and an active and earnest search for new employment. The claimant must meet all other eligibility requirements.

The claimant shall be reclassified as a group 6 claimant despite the ongoing part-time supplemental employment with Good Samaritan Society, Inc. and shall be required to report employer contacts as part of her weekly claim report.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs