

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TORI A RABE
Claimant

APPEAL NO: 07A-UI-01159-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SOUTHEAST POLK COMM SCHOOL DIST
Employer

OC: 08/20/06 R: 02
Claimant: Appellant (4)

Section 96.3-3 - Eligibility for Partial Unemployment Insurance Benefits
Section 96.4-3 – Able and Available
Section 96.7-2-a(2) – Charges Against Employer’s Account

STATEMENT OF THE CASE:

Tori A. Rabe (claimant) appealed a representative’s January 25, 2007 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits in connection with her employment with Southeast Polk Community School District (employer). Hearing notices were mailed to the parties’ last-known addresses of record for a telephone hearing to be held on February 15, 2007. In lieu of the hearing being held, the administrative law judge determined and the parties concurred that no hearing was necessary and that a decision could be made on the record. Based on a review of the information in the administrative file and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant eligible for at least partial unemployment insurance benefits by being able and available for work? Is the employer’s account subject to charge?

FINDINGS OF FACT:

The claimant filed a new claim for unemployment insurance benefits with an effective date of August 20, 2006, after her employment with the Des Moines Independent Community School District (DMSD), her sole base period employer, ended. She had worked full time for the DMSD and her average weekly wage was \$414.49. Upon the filing of her claim, the claimant’s weekly benefit amount was determined to be \$256.00 based solely on the wages paid by DMSD. Her earnings limit was determined to be \$271.00. The claimant began receiving unemployment insurance benefits each week.

The claimant began working as a substitute teacher for the employer on September 5, 2006, and has continued to work for the employer in that position ever since that time. Since starting her job with the employer, the claimant has filed weekly claims for benefits and reported her earnings each week. The Agency paid the claimant partial unemployment insurance benefits for weeks in which her earnings were less than \$271.00 until October 8, 2006.

During the five weeks ending November 11, 2006, the claimant worked sufficient hours due to the employer's needs and had weekly earnings over \$271.00. Additionally, the claimant filed no weekly claims for the next six weeks ending December 23, 2006. As a result, the claimant was required to file an additional claim for benefits effective December 24, 2006, so her employment status could be evaluated.

Since reopening her claim with the additional claim as of December 24, 2006, the claimant has had weeks in which she worked less than full time and earned less than \$271.00.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was eligible for unemployment insurance benefits effective December 24, 2006, and thereafter by virtue of her employment with this employer. The claimant is requesting partial unemployment insurance benefits for the weeks in which her wages were less \$271.00.

Iowa Code § 96.3-3 provides:

3. Partial unemployment. An individual who is partially unemployed in any week as defined in section 96.19, subsection 38, paragraph "b", and who meets the conditions of eligibility for benefits shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. The benefits shall be rounded to the lower multiple of one dollar.

Iowa Code § 96.19-38-b provides in part:

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.

The Agency has interpreted these sections in defining a "week of unemployment" as "a week in which an individual performs less than full-time work for any employing unit if the wages payable with respect to such week are less than a specified amount," which would be the partial earnings allowance described above. 871 IAC 24.1(138). The Agency, however, relied on Iowa Code § 96.4-3 and 871 IAC24.23(26) in denying benefits to the claimant.

Iowa Code § 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".

871 IAC 24.23(26) provides:

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

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

In the present case, the claimant was working full time during the base period for the DMSD. This establishes the claimant's "regular workweek" for determining whether she was partially unemployed or "still employed under her same hours and wages" under the statutes and rules. The claimant had weeks since filing her additional claim in which she worked less than the regular full-time hours she had been working for the DMSD during her base period and in which she earned less than \$271.00. The claimant continues to be available for full time work. She meets the definition of partially unemployed and is available for work as required by law. She is qualified to receive unemployment insurance benefits in weeks in which she works less than full time and has earnings less than \$271.00.

The next issue is whether the employer's account is subject to charge for benefits paid to the claimant.

Iowa Code § 96.7-2-a(2) provides in part:

(2) The amount of regular 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.

The employer is not presently chargeable for benefits paid to the claimant because it is not a base period employer on the claim. Iowa Code § 96.19-3. If in the future the employer becomes a base period employer in a later benefit year, the employer's account will be exempt from charge under this statute as long as the employer continues to provide the claimant with the same conditions of employment as it provides currently.

DECISION:

The representative's January 25, 2007 decision (reference 01) is modified in favor of the claimant. The claimant is qualified to receive unemployment insurance benefits effective December 24, 2006, in weeks in which she works less than full time and has earnings of less than \$271.00, if she is otherwise eligible. The employer's account is not subject to charge in the current benefit year.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs