

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANGELA M ODEAN
Claimant

BEATON INC
Employer

APPEAL 17A-UI-07480-DL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/25/17
Claimant: Respondent (4)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a – Same Base Period Employment

STATEMENT OF THE CASE:

The employer filed an appeal from the July 14, 2017, (reference 01) unemployment insurance decision that allowed benefits based upon being able to and available for work and partially unemployed. The parties were properly notified about the hearing. A telephone hearing was held on August 10, 2017. Claimant participated. Employer participated through controller Kathey Frerichs. Employer's Exhibit 1 (fax pages 3 – 22) was received.

ISSUES:

Is the claimant able to work and available for work effective June 25, 2017?
Does the claimant meet the definition of being considered partially unemployed?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a part-time crew member for Burger King. She was hired to work variable hours within a range of 30 to 35 hours per week. There was no guarantee of a minimum number of hours. In April 2017, she worked fewer hours because of her grandfather's illness and hospitalization out of the area. There is no prior claim year covering the first quarter of 2017. On most occasions she found replacements to work her shift but was warned about other absences for which she did not. (Employer's Exhibit 1 p. 21) Then she made other call-offs for reasons related to transportation in June 2017, and restricted her hours to Monday, Wednesday, and Friday nights, after beginning another job at KFC in July 2017. (Employer's Exhibit 1 p. 22) As recently as July 15, claimant told the employer she wanted replacement worker numbers because of a scheduling conflict with her other job. (Employer's Exhibit 1 p. 18) Her initial availability was listed as 5:30 a.m. to 10 p.m. She has never been scheduled to close so getting a ride home had not been an issue. Her wage history with this employer, at \$8.50 per hour, is:

2 nd Qtr 201_	3 rd Qtr 201_	4 th Qtr 201_	1 st Qtr 201_	2 nd Qtr 201_
\$0	\$460	\$2779	\$1540	\$1841

Divided by \$8.50/hour = 54.12 326.94 181.18 216.59 hours/qtr
 Divided by 13 weeks/qtr=4.16 25.15 13.94 16.66 hours/week

See also Employer's Exhibit 1 p. 19.

Shown below is her benefit claim and payment record showing the week-ending date, the amount of wages reported, the benefit payment issue date and the gross benefit amount:

PAYMENT-RECORDS

BWE-DATE	AMT-RP	ISSUE-DT	AMOUNT
07/01/17	70.00	07/13/17	80.00
07/08/17	43.00	07/13/17	107.00
07/15/17	43.00	07/17/17	107.00

The employer's schedules did note illness and being stuck in Iowa City as reasons for not working particular scheduled shifts. (Employer's Exhibit 1 pp. 3-17) Claimant had been scheduled between 20 and 27 hours per week in April 2017. In May 2017, hours ranged roughly from 10 to 16 hours per week. Hours were then reduced to a low of nine and a high of 18.5. In July 2017, her schedule hours dropped to just over three or four hours per week. (Employer's Exhibit 1 p. 20) Manager Alisa told her that all employees' hours were cut a shared 100 hours because labor costs were too high and she needed to allow for new employees to be trained to work in a new store that was not yet open at the time of hearing.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is partially unemployed effective June 25, 2017, for the three weeks-ending July 15, 2017.

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.

Claimant's testimony is credible that, even though she had some absences for personal reasons, more recently the manager told her that hours were cut because of labor and training costs. Because the claimant is not currently employed under the same hours and wages as contemplated at hire or as established in the base period, she is considered partially unemployed. Benefits may be allowed based upon reporting of weekly earnings. For whatever period the employer is not offering the same wages and hours as contemplated in the contract or terms of hire, it may be liable for benefit charges to its account. In this situation since she began another part-time job, if claimant reopens her claim she will have to reestablish her availability for work.

DECISION:

The July 14, 2017, (reference 01) unemployment insurance decision is modified in favor of the appellant. The claimant was partially unemployed and benefits for the three weeks-ending July 15, 2017, are allowed, provided she is otherwise eligible. The employer's account (176046) may be liable for charges.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/rvs