

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARNITA A SCHWARTING
Claimant

APPEAL NO. 12A-UI-12038-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST PARTNERS INC
Employer

OC: 12/11/11
Claimant: Appellant (2)

Iowa Code Section 96.4(3) – Still Employed Same Hours and Wages
Iowa Code Section 96.7(2) – Employer Liability

STATEMENT OF THE CASE:

Marnita Schwarting filed a timely appeal from the September 24, 2012, reference 04, decision that denied benefits effective August 19, 2012 based on an agency conclusion that she was not partially unemployed. After due notice was issued, a hearing was held on October 31, 2012. Ms. Schwarting participated. Jeff Oswald of Unemployment Insurance Services represented the employer and presented testimony through Cindy Weber. The hearing in this matter was consolidated with the hearing in Appeal Number 12A-UI-12039-JTT. Exhibits One and Four were received into evidence. The administrative law judge took official notice of the March 7, 2012, reference 01 decision, and the May 29, 2012, reference 03 decision. The administrative law judge took official notice of the monetary record mailed to Ms. Schwarting on December 22, 2011. The administrative law judge took official notice of the agency's administrative record (DBRO) of wages reported by or for the claimant and benefits disbursed to the claimant.

ISSUES:

Whether Ms. Schwarting was partially unemployed during the week that ended August 25, 2012.

Whether the employer's account may be assessed for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Marnita Schwarting became an employee of West Partner's, Inc., d/b/a Hardees of Grinnell, effective July 29, 2011. Since Ms. Schwarting became an employee of West Partners, she has generally worked five days a week and about 33 hours per week. Ms. Schwarting's hourly wage has been \$8.30. Ms. Schwarting's weekly hours and wages since she began with the employer are set forth in Exhibit One, which is incorporated herein by this reference.

Though Ms. Schwarting started with the new employer in July 2011, she did not establish a claim for unemployment insurance benefits until December 11, 2011. At that point, Ms. Schwarting's work hours had dipped as low as 14.3 hours per week. At the time

Ms. Schwarting established her claim for benefits, Workforce Development calculated her weekly benefit amount to be \$220.00.

Ms. Schwarting established an additional claim for benefits that was effective August 19, 2012. Ms. Schwarting then only claimed benefits for the week ending August 25, 2012. Ms. Schwarting then discontinued her claim for benefits. For the week ending August 25, 2012, Ms. Schwarting reported wages of \$164.00 and was paid benefits of \$111.00. The employer's wage and hours record indicates that Ms. Schwarting's work hours did dip to 17.31 hours during that week.

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".

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).

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. 871 IAC 24.23(26). Contract for hire merely means the established conditions of the employment. See Wiese v. Iowa Dept. of Job Service, 389 N.W.2d 676, 679 (Iowa 1986).

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.]

Because Ms. Schwarting only claimed benefits for the week that ended August 25, 2012, that is the only week that the administrative law judge need address. The weight of the evidence indicates that Ms. Schwarting was indeed partially unemployed during the benefit week that ended August 25, 2012, when the work hours the employer had available for her dipped, and Ms. Schwarting's wages did not exceed her weekly unemployment insurance benefit amount plus \$15.00. The Schwarting was eligible for \$111.00 in benefits she received for the week ending August 25, 2012, provided she is otherwise eligible. The employer's account may be charged for those benefits.

DECISION:

The Agency representative's September 24, 2012, reference 04, is reversed. The claimant was partially unemployed during the week that ended August 25, 2012 and is eligible for benefits for that week, provided she is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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