

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

CAROL L THOMPSON
Claimant

APPEAL NO. 19A-UI-05780-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SOLON STATE BANK
Employer

OC: 06/23/19
Claimant: Appellant (5)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.19(38)(b) – Partial Unemployment
Iowa Code Section 96.19(38)(c) – Temporary Layoff
Iowa Code section 96.7(2) – Employer Liability

STATEMENT OF THE CASE:

Carol Thompson filed a timely appeal from the July 15, 2019, reference 01, decision that denied benefits effective June 23, 2019, based on the deputy's conclusion that Ms. Thompson was not partially unemployed within the meaning of the law. After due notice was issued, a hearing was held on August 13, 2019. Ms. Thompson participated. Linda Sovers represented the employer. Exhibit A and Department Exhibits D-1, D-2 and D-3 were received into evidence.

ISSUES:

Whether Ms. Thompson has been able to work and available for work within the meaning of the law since June 23, 2019.

Whether Ms. Thompson has been partially unemployed and/or temporarily unemployed since June 23, 2019.

Whether the employer account of Solon State Bank may be assessed for benefits paid to Ms. Thompson in connection with the claim that was effective June 23, 2019.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Carol Thompson established a new claim year and a new original claim that was effective June 23, 2019. Iowa Workforce Development set Ms. Thompson's weekly benefit amount at \$467.00. Ms. Thompson's base period for purposes of the new claim year consists of the four calendar quarters of 2018. Ms. Thompson's base period employers include Chico's FAS, Inc., L & A, L.L.C., NCS Pearson, Inc., and her newest employer, Solon State Bank. Ms. Thompson began her part-time employment with Solon State Bank in October 2018. Ms. Thompson averages 12 hours per week in the Solon State Bank employment. Ms. Thompson's wage in the Solon State Bank employment is \$13.00 per hour. There has been no change in the conditions of the part-time Solon State Bank employment since Ms. Thompson began the employment

Ms. Thompson separated from full-time employment with L & A, L.L.C. during the second quarter the 2018. During that same calendar quarter, Ms. Thompson commenced working as an on-call/temporary Professional Scorer for NCS Pearson. The NCS Pearson work involves scoring standardized tests. Ms. Thompson has performed work for NCS Pearson during multiple brief periods since she started the employment. In 2019, Ms. Thompson worked in temporary NCS Pearson scoring projects from January 22 to February 11, from April 8 to April 3, and most recently from May 16 to June 14. When Ms. Thompson works in these temporary test scoring assignments, she generally works full-time hours. The work pays \$14.00 per hour. Ms. Thompson remains available for additional work with NCS Pearson, but does not know when that employer will contact her again to have her assist with another scoring project.

Ms. Thompson's only other employment is part-time employment with Chico's FAS, Inc. a women's clothing boutique. Ms. Thompson generally works a few hours of week in this part-time employment. The hours may include a couple evening shifts per week and a weekend shift. There has been no change in the conditions of the Chico's employment.

When Ms. Thompson established the original claim that was effective June 23, 2019, she reported that she was job-attached. Based on that information, Iowa Workforce Development categorized Ms. Thompson as a group 3, job-attached claimant. Based on the group 3 categorization, the weekly claims reporting system did not prompt Ms. Thompson to report weekly employer job contacts.

At the time of the August 13, 2019, appeal hearing, Ms. Thompson had made weekly claims on the new claim year for the six weeks between June 23, 2019 and August 3, 2019. Ms. Thompson reported wages for each week. Those wages derived from a combination of the part-time Solon State Bank employment and the part-time Chico's employment. For each week, Ms. Thompson reported wages that were less than her \$467.00 weekly benefit amount.

Ms. Thompson is physically able to perform ongoing full-time employment, but prefers to work in the temporary projects at NCS Pearson.

Ms. Thompson is 63 years old and receives Social Security retirement benefits. Ms. Thompson has conferred with her accountant regarding the maximum wages she can earn in a year without impacting her Social Security benefits and understands that amount to be about \$28,000.00 per year.

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. 871-24.23(22) provides:

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

(22) Where a claimant does not want to earn enough wages during the year to adversely affect receipt of federal old-age benefits (social security).

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 weight of the evidence establishes that Ms. Thompson has not been available for work within the meaning of the law, has not been *temporarily* laid off within the meaning of the law, and has not been partially unemployed within the meaning of the law since she established the original claim for benefits that was effective June 23, 2019. Ms. Thompson most recently performed work in regular full-time employment during the second quarter of 2019. Since that time, Ms. Thompson has elected not to pursue regular full-time employment despite being

capable of performing regular full-time work. Ms. Thompson has instead elected to restrict her availability for work to on-call/temporary employment with NCS Pearson and to a couple part-time jobs. Since June 23, 2019, Ms. Thompson has intentionally restricted her availability for regular full-time work so as to avoid earning enough wages in the year to adversely affect her receipt of Social Security benefits. As of the August 13, 2019 appeal hearing, Ms. Thompson had been away from the NCS Pearson employment for about two months, indicating a separation from that on-call/temporary employment that was effective June 14, 2019, not a temporary layoff. There have been no changes in the conditions of the part-time employment at Solon State Bank or in the Chico's employment. Accordingly, there has been no partial unemployment from either employer. The employer account of Solon State Bank shall not be assessed for benefits so long as that employer continues to offer Ms. Thompson the same hours and wages.

Because the weight of the evidence establishes that Ms. Thompson has not been available for work, partially unemployed, or temporarily unemployed since she established the original claim that was effective June 23, 2019, Ms. Thompson is not eligible for unemployment insurance benefits. Benefits are denied effective June 23, 2019. The availability disqualification continued as of the August 13, 2019 appeal hearing

This matter will be remanded to the Benefits Bureau for adjudication of the June 14, 2019 separation from the on-call/temporary NCS Pearson employment and for correction of Ms. Thompson's group code classification to group 6, job search required.

DECISION:

The July 15, 2019, reference 01, decision is modified as follows. The claimant has not been available for work, partially unemployed, or temporarily unemployed since she established the original claim that was effective June 23, 2019. Benefits are denied effective June 23, 2019. The availability disqualification continued as of the August 13, 2019 appeal hearing

This matter is remanded to the Benefits Bureau for adjudication of the June 14, 2019 separation from the on-call/temporary NCS Pearson employment and for correction of the claimant's group code classification to group 6, job search required.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs