

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CYNTHIA J LITTLE

Claimant

APPEAL NO: 14A-UI-07683-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KOHL'S DEPARTMENT STORES INC

Employer

OC: 06/15/14

Claimant: Appellant (4/R)

Section 96.19-38-b – Eligibility for Partial Unemployment Insurance Benefits
871 IAC 23.43(4)(a) – Charges for Partial Unemployment Insurance Benefits

STATEMENT OF THE CASE:

Cynthia J. Little (claimant) appealed a representative's July 22, 2014 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits because she was still employed. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 18, 2014. The claimant participated in the hearing. A review of the Appeals Section's conference call system indicates that Kohl's Department Stores, Inc. (employer) failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue in this case is whether the claimant is eligible for partial unemployment insurance benefits and the employer's account is subject to charge.

FINDINGS OF FACT:

The claimant started working for the employer in about 1999. She works part time, about 25 - 30 hours per week, as an associate. From about August 2013 until August 2014, her hourly rate of pay was about \$11.23 per hour. As of about August 3, 2014, it is about \$11.34 per hour. She continues to work under her same hours and wages with this employer, and did so also for the period of time between May 28 and August 18, 2014.

The claimant most recently established a claim for unemployment insurance benefits effective June 15, 2014. She had a prior claim year effective June 16, 2013, which she reactivated by filing an additional claim effective May 25, 2014. She did so because she had employment with another base period employer, the City of Urbandale, from which she was separated for the summer of 2013 and the summer of 2014. The employment from the City of Urbandale is seasonal. She works about ten hours per week. In the 2013 – 2014 season the claimant was

paid \$17.99 per hour. Effective August 18, 2014 she resumed employment for the 2014 – 2015 season at a rate of \$18.28 per hour.

Her base period for the June 15, 2014 claim year is January 1 through December 31, 2014. The high quarter of her base period was the third quarter 2013, in which her wages from this employer were \$5,212.00 and her wages from the City of Urbandale were \$593.00. Pursuant to law, her weekly benefit amount was calculated to be \$281.00 based upon these high quarter wages.

The claimant's last day of work for the City of Urbandale prior to August 18, 2014 was May 25, 2014. She is seeking partial unemployment insurance benefits for the period of time she was not employed by the City of Urbandale.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is eligible for partial unemployment insurance benefits and the employer's account is subject to charge. The unemployment insurance law provides that a claimant is deemed partially unemployed if she has been permanently or temporarily separated from one employer and earns less than her weekly benefit amount plus \$15.00 in other employment. Iowa Code § 96.19-38-b; see also Iowa Code § 96.3-3.

If the claimant had other part-time employment during her base period and remains in that employment, she continues to be eligible for benefits as long as she is receiving the same employment from the part-time employer that she received during the base period, and she earns less than her weekly benefit amount plus \$15.00. However, under those circumstances the part-time employer's account is relieved of benefit charges. Rule 871 IAC 23.43(4)a.

The claimant was temporarily separated from her other regular base period employer and continued to work for this part-time base period employer. The employer was providing the claimant with substantially the same employment as it provided during her base period. Consequently, the claimant is qualified to receive at least partial unemployment insurance benefits effective June 15, 2014, provided she was otherwise eligible. To be eligible for benefits for any particular week, the claimant must file a weekly claim for that week reporting her wages from all employers earned (not paid) for that week; the amount of her eligibility will then be determined pursuant to the formula set out by the statute. Rule 871 IAC 24.52(8); Iowa Code § 96.3-3.

Under rule 871 IAC 23.43(4)a the employer is exempt from charge for benefits paid to the claimant as long as it continues to provide the claimant with the same part-time employment it provided during her base-period.

The claimant did make weekly continued claims since June 15, 2014, but did not understand that she needed to be reporting her wages earned from any source, including this employer. The matter will be remanded to the Benefits Bureau to communicate with the claimant to obtain the necessary information to supplement her weekly continued claims to include that information so that a calculation can be done as to whether there are weeks for which she is eligible for partial benefits. Also, because she did not understand this requirement, the claimant failed to report her wages earned during weeks under her June 16, 2013 claim for which she received benefits; the matter will be remanded for a cross check of the claimant's wages for those weeks against the weeks in which she received benefits.

DECISION:

The unemployment insurance decision dated July 22, 2014 (reference 01) is modified in favor of the claimant. The claimant is eligible for partial unemployment insurance benefits, provided she is otherwise eligible, and the employer's account is exempt from charge for benefits paid to the claimant. The matter is **REMANDED** for a calculation of the amount of partial benefits based upon what wages the claimant earned in this other employment for the weeks in question, and **REMANDED** for a review and cross-check of whether there were weeks in the June 16, 2013 claim year for which wages were earned and should have been reported but were not.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css