

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CAMELIA GIVENS
Claimant

APPEAL NO. 11A-UI-14474-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RAPID-MAC INC
Employer

OC: 10/02/11
Claimant: Appellant (4-R)

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

STATEMENT OF THE CASE:

Camelia Givens filed a timely appeal from the October 29, 2011, reference 01, decision that denied benefits effective October 2, 2011 based on an Agency conclusion that she was not able to work. After due notice was issued, a hearing was held on December 2, 2011. Ms. Givens provided a telephone number for the hearing (773-299-0750), but was not available at that number at the scheduled time of the hearing. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Based on the contents of the administrative file, the administrative law judge enters the following decision.

The claimant contacted the administrative law judge 47 minutes after the scheduled start of the hearing, after the hearing record had closed, and as the administrative law judge was preparing for the next case. The claimant provided internally contradictory statements regarding why she had not answered the administrative law judge's calls at the scheduled start of the hearing. The administrative law judge concluded that the claimant had not provided good cause to reopen the record with regard to the four weeks addressed in this decision. The administrative law judge notes that he entered a decision favorable to the claimant concerned the four weeks in question, based solely on the contents of the administrative file.

ISSUES:

Whether the claimant has been able to work and available for work since establishing her claim for benefits.

Whether the claimant was partially unemployed from her employment.

Whether the claimant was temporary unemployed from her employment.

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Camelia Givens is employed by Rapid-Mac, Inc., as a part-time restaurant crew member. Ms. Givens started the employment in September 2010. Ms. Givens ordinarily mans the drive through window. On October 6, 2011, Ms. Givens presented the employer with a doctor's note stating that she could not work the drive through window from October 6, 2011 until October 20, 2011, due to car exhaust causing her chest pains and headaches. The general manager initially directed Ms. Givens to work the drive through window anyway. On October 7, a manager directed Ms. Givens to leave the workplace until she was able again to work the drive through window. The general manager directed other managers not to schedule Ms. Givens during the period of October 10-20, 2011. The employer placed Ms. Givens back on the scheduled effective October 26, 2011 and returned to work that day.

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).

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).

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.]

The weight of the evidence contained in the administrative file indicates that Ms. Givens was partially unemployed during the benefit week that ended October 8, 2011. The weight of the evidence indicates that Ms. Givens was temporarily unemployed during the weeks that ended October 15, 2011 and October 22, 2011. The weight of the evidence indicates that Ms. Givens was partially unemployed during the benefit week that ended October 29, 2011. Ms. Givens worked in a restaurant. The claimant was able to perform work during the benefit weeks referenced above. The claimant just was not able during the period of October 6 through 20 to work at the drive through window. This did not prevent her from being able to perform other comparable duties for the employer. Rather provide reasonable accommodation for a rather minor, temporary health condition issue, the employer elected to suspend Ms. Givens' employment. The employer had an obligation to provide Ms. Givens with reasonable accommodations that would allow her to continue in the work. See Sierra v. Employment Appeal Board, 508 N.W. 2d 719 (Iowa 1993). Ms. Givens was able and available for work and eligible for benefits for the four-week period of October 2, 2011 through October 29, 2011, provided she was otherwise eligible. The employer's account may be charged for benefits for that period.

This matter is remanded for determination of whether Ms. Givens has been partially unemployed since October 30, 2011.

DECISION:

The Agency representative's October 29, 2011, reference 01 is modified as follows. The claimant was able and available for work, but partially unemployed, during the benefit week that ended October 8, 2011. The claimant was able and available for work, but temporarily unemployed, during the weeks that ended October 15, 2011 and October 22, 2011. The claimant was able and available for work, but partially unemployed, during the benefit week that ended October 29, 2011. The claimant is eligible for benefits for the four-week period of October 2, 2011 through October 29, 2011, provided she was otherwise eligible.

This matter is remanded for determination of whether the claimant has been partially unemployed since October 30, 2011.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css