

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARILYN J MILLER
Claimant

APPEAL NO: 09A-UI-17808-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICAN LEGION #363
Employer

OC: 11/23/08

Claimant: Appellant (4)

Section 96.4-3 - Availability for Work

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:

Marilyn J. Miller (claimant) appealed a representative's November 18, 2009 decision (reference 03) that concluded she was not qualified to receive unemployment insurance benefits as not being able and available for work with American Legion #363 (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 7, 2010. The claimant participated in the hearing. Jack Anderson appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

FINDINGS OF FACT:

After a separation from her prior full time employer, the claimant established an unemployment insurance benefit year effective November 23, 2009. Her weekly benefit amount was calculated to be \$267.00. The claimant started working part time for the employer on April 15, 2009 as a cook, waitress, and occasional bartender. She typically works approximately 12 to 15 hours per week. As of the date of the hearing she was still working for the employer on essentially this same basis. Since gaining the part time employment with the employer she has been filing weekly claims for unemployment insurance benefits in which she has been reporting her gross wages and receiving partial unemployment insurance benefits for weeks in which her wages were less than \$282.00 (\$267.00 + \$15.00).

There was an occurrence which nearly disrupted this employment arrangement at the end of October/beginning of November 2009. The claimant had been filling in some hours for her son, who had also worked for the employer, and had relied on him to cover some weekend evenings that she sometimes could not work. At the end of October the claimant's son's employment with the employer was terminated due to some miscommunication. As a result, the claimant was concerned about not having coverage for times she could not work, and suggested she would have to cut back her hours. There was no specific evidence provided as to any incident where the claimant could have worked a time she had previously been available to work but declined to work. However, she tendered her letter of resignation on October 22, to be effective

November 6. Consequently, the employer then hired an additional employee, and the claimant found she was able to work out an arrangement with that new employee where the two employees could cover for each other so that the times the employer wished to be open could all be covered. There were discussions between the claimant and the employer, and in effect she was allowed to rescind her resignation. As a consequence, the claimant's employment did not end and her hours have essentially remained the same as when she was hired.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is eligible for partial unemployment insurance benefits and whether 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.

In the present case, the claimant was working approximately 40 hours per week during the base period for her prior employer. This establishes the claimant's "regular workweek" for determining whether she was partially unemployed under the statutes and rules. The claimant had weeks since her employment with the employer in which she worked less than the regular full-time hours she had been working for her prior full time employer during her base period and in which she earned less than \$287.00. The claimant continues to be available for work. She meets the definition of partially unemployed and is available for work as required by law. She is qualified to receive unemployment insurance benefits in weeks in which she works less than 40 hours and has earnings less than \$287.00. 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. 871 IAC 24.52(8); Iowa Code § 96.3-3. However, the claimant's continued eligibility could be affected in the event there is an actual separation from employment or if she does actually alter her overall availability for work.

The next issue is whether the employer's account is subject to charge for benefits paid to the claimant.

Iowa Code § 96.7-2-a(2) provides in part:

(2) The amount of regular 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.

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.

See also, 871 IAC 23.43(4)a. The employer is not presently chargeable for benefits paid to the claimant because it is not a base period employer on the claim. If in the future the employer becomes a base period employer in a later benefit year, the employer's account will be exempt

from charge under this statute as long as the employer continues to provide the claimant with the same employment as she currently averages per week.

DECISION:

The unemployment insurance decision dated November 18, 2009 (reference 03) 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.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs