

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANA L DAVENPORT
Claimant

APPEAL NO. 14A-UI-05575-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SAC & FOX TRIBE
Employer

OC: 04/27/14
Claimant: Appellant (2)

Iowa Code §96.4(3) – Able and Available
Iowa Code §96.19(38)a & b – Total and Partial Unemployment
Iowa Code §96.7(2)a – Same Base Period Employment

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 22, 2014, (reference 02) unemployment insurance decision that denied benefits. After due notice was issued a hearing was held on June 23, 2014. The claimant did participate. The employer did participate through Azadeh Tavakoli, Human Resources and Rudy Papakee, Health Director. Employer's Exhibit One was entered and received into the record.

ISSUE:

Is the claimant still employed at the same hours and wages or is she partially unemployed?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired to work full time as a fitness assistant on June 27, 2011 through date of hearing, as she remains employed. The claimant was promoted to fitness specialist on June 23, 2013 as a result of a grant change. She and a coworker were told that in order to keep the grant they would need to achieve so many fitness assessments. The claimant and her coworker had no way to force individuals into fitness assessments. The claimant and her coworker performed to the best of their ability, but were not able to achieve the desired results and their jobs were each cut to part-time hours. The claimant was specifically cut from forty hours per week to twenty hours per week. The claimant had no warnings that her job was in jeopardy. Her supervisor never provided any suggestion that she did not follow in an attempt to encourage tribe members to undergo the fitness assessments. After the claimant's hours were cut, she took all available substitute hours at the school that she could.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is partially unemployed beginning April 21, 2014.

Iowa Code § 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 Code § 96.19-38 provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. 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.

An individual shall be deemed partially unemployed in any week in which the individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. 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 § 96.7(2)a(2) provides:

2. Contribution rates based on benefit experience.

a. (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.

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 § 96.8, subsection 5.

An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding § 96.8, subsection 5.

The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under § 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under § 85.33, § 85.34, subsection 1, or § 85A.17, or responsible for paying indemnity insurance benefits.

The claimant's hours were cut from full time to part time effective April 2014 when the tribe lost some grant proceeds that had funded her job. The administrative law judge cannot conclude that the claimant did anything to cause the loss of funding. She performed to the best of her ability, thus the reduction in hours cannot be attributed to her. Because the claimant is currently employed less than her regular full-time hours, she is considered partially unemployed. Benefits may be allowed based upon reporting of weekly earnings. For whatever period the employer is not offering the same wages and hours as contemplated in the contract of hire, that is forty hours per week, it may be liable for benefit charges to its account.

DECISION:

The May 22, 2014, (reference 02), decision is reversed. The claimant is partially unemployed and benefits are allowed, provided she is otherwise eligible. The account of the employer (account number 3155506), may be liable for charges.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

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