

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**ALICIA L MCGEE**  
Claimant

**APPEAL NO. 18A-UI-04427-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KWIK TRIP INC**  
Employer

**OC: 03/11/18**  
**Claimant: Appellant (4)**

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(2) – Same Base Period Employment  
871 IAC 24.22(2)f – Part-Time Worker – Able and Available

**STATEMENT OF THE CASE:**

Alicia McGee (claimant) appealed a representative's April 3, 2018, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she still worked for Kwik Trip Inc. (employer) for the same hours and wages as in her original contract for hire. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 3, 2018. The claimant participated personally. The employer participated by Shanquniisha Robinson, Assistant Manager.

**ISSUE:**

The issue is whether the claimant is disqualified for being unavailable for work. .

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on August 30, 2016, as a part-time guest service co-worker. On January 20, 2018, the claimant took a part-time job as a bus driver for Durham D & M. The claimant was laid off for lack of work from Durham D & M over spring break for the week ending March 17, 2018. She filed for unemployment insurance benefits with an effective date of March 11, 2018. The claimant worked for the employer the week ending March 17, 2018, and reported her wages to the department. She also has other wages in the base period history.

The claimant stopped showing up for work with the employer after March 17, 2018, and quit. She returned to work with Durham D & M on March 18, 2018, and continues to work about thirty hours per week. The claimant only filed for one week of unemployment insurance benefits.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant is partially unemployed and the part-time employer is relieved of benefit charges.  
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 either of the following apply:

(1) 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.

(2) 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)(a), (b), and (c) 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.

(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.

(b) 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 section 96.8, subsection 5.

(c) 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 section 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 section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

Iowa Admin. Code r. 871-23.43(4)a provides in part:

(4) Supplemental employment.

a. An individual, who has been separated with cause attributable to the regular employer and who remains in the employ of the individual's part-time, base period employer, continues to be eligible for benefits as long as the individual is receiving the same employment from the part-time employer that the individual received during the base period. The part-time employer's account, including the reimbursable employer's account, may be relieved of benefit charges....

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). Because the claimant has other base-period wages and is currently employed part-time, she is considered partially unemployed. Partial benefits are allowed for the one week period ending March 17, 2018. Inasmuch as the current part-time employer is offering the same wages and hours as in the base period, no benefit charges shall be made to its account.

**DECISION:**

The representative's April 3, 2018, decision (reference 01) is modified in favor of the appellant. The claimant was partially unemployed and benefits are allowed for the week ending March 17, 2018, provided she was otherwise eligible. The account of the current part-time employer (account number 116702) shall not be charged.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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