

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KATE PETTENGILL

Claimant

APPEAL 21A-UI-19009-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

KWIK TRIP INC

Employer

OC: 07/11/21

Claimant: Appellant (4R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871—24.23(26) – Availability Disqualifications Same Hours and Wages
Iowa Code § 96.1A(37) – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

The claimant, Kate Pettengill, filed an appeal from the August 26, 2021, (reference 01) unemployment insurance decision that denied benefits based upon the determination that claimant was still employed at the same hours and wages as contemplated at hire in her employment with the employer, Kwik Trip, Inc. The parties were properly notified of the hearing. A telephone hearing was held on October 20, 2021. The claimant participated personally. The employer participated through Emily Speropulos. The administrative law judge took official notice of the administrative record.

ISSUES:

Whether claimant is totally, partially or temporarily unemployed.
Whether claimant is able to and available for work.
Whether claimant is still employed at the same hours and wages.
Whether employer's account is subject to charge.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part time as a retail coworker beginning June 4, 2021. She remains employed in this role as of the date of her hearing.

As of June 4, 2021, claimant voluntarily stepped down from a leadership position to the role of part-time retail coworker. In that role, she is not guaranteed a certain number of hours, but can be scheduled for up to 28 hours per week. There has never been a week in which she did not work some hours for this employer. She filed weekly claims and reported wages in the following manner:

In the benefit week ending July 17, 2021, claimant reported \$120.00 in wages earned.

In the benefit week ending July 24, 2021, claimant reported \$130.00 in wages earned.

In the benefit week ending July 31, 2021, claimant reported \$75.00 in wages earned.

In the benefit week ending August 7, 2021, claimant reported \$200.00 in wages earned.

In the benefit week ending August 14, 2021, claimant reported \$170.00 in wages earned.

In the benefit week ending August 21, 2021, claimant reported \$350.00 in wages earned.

In the benefit week ending August 28, 2021, claimant reported \$100.00 in wages earned.

In June 2021, claimant began working full-time at a second employer, iProspectCheck. In early July 2021, iProspectCheck claimant separated from that employment. At that time, claimant filed a claim for unemployment benefits with an effective date of July 11, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is partially unemployed for the period between the weeks of July 11, 2021, and August 22, 2021, and this part-time employer is relieved of benefit charges.

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".

Iowa Code section 96.1A(37) 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 section 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.

For the period at issue, claimant was partially unemployed because she was working part-time for this employer, after being separated from another employer. However, because she has other base period wages from another employer, and because this employer transitioned to supplemental employment prior to claimant filing for unemployment insurance benefits, this employer's account is not chargeable. The administrative law judge notes that this employment became part time, and supplemental, by claimant's own choice, when she elected to take other full-time employment. The transition to part-time with this employer was not disciplinary or otherwise punitive. Claimant's contract of hire was, in effect, renegotiated between the parties

at the time that she stepped down from her leadership role and began working part time. Inasmuch as the current part-time employer is offering the same wages and hours as contemplated at the time of the renegotiated contract of hire, no benefit charges shall be made to its account.

DECISION:

The August 26, 2021, (reference 01) unemployment insurance decision is modified in favor of the appellant. The claimant is partially unemployed and benefits are allowed, provided she is otherwise eligible. The account of the current part-time employer, Kwik Trip, Inc. (account number 116702-000), shall not be charged.

REMAND:

The monetary eligibility issue from the base period wage history (employer account number 634221-000) as delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.



Alexis D. Rowe
Administrative Law Judge

November 5, 2021
Decision Dated and Mailed

ar/scn