

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STACEY D STUBBS
Claimant

JEMM COMPANY LLC
Employer

APPEAL 19A-UI-00662-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/02/18
Claimant: Respondent (4)

Iowa Code § 96.4(3) – Ability to and Availability for Work
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:

Jemm Company, LLC (employer) filed an appeal from the January 18, 2019, reference 03, unemployment insurance decision that allowed benefits based upon the determination Stacy D. Stubbs (claimant) is still employed part-time whenever work is available and did not relieve the employer's account of charges. After due notice was issued, a telephone conference hearing began on February 8, 2019 and concluded on February 12, 2019. The claimant participated. The employer participated through Owner Jackie Cotter and General Manager Shamus Jackson. The Claimant's Exhibit A and the Employer's Exhibits 1 and 2 were admitted without objection.

ISSUES:

Does the claimant meet the definition of being considered partially unemployed?
Is the claimant able to and available for work?

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: The claimant filed her claim for unemployment insurance benefits effective December 2, 2018 and her weekly benefit amount is \$284.00. The claimant's base period begins with third quarter of 2017 and goes through the second quarter of 2018. The only employer with wage credits in the claimant's base period is Cracker Barrel (account number 239614). The claimant worked full-time for Cracker Barrel during her base period.

The claimant was hired to work full-time as a Server with the employer on July 30, 2018. She then changed her status to part-time with Cracker Barrel. From July 30, 2018, through October 14, 2018, the employer had full-time work available for the claimant as contemplated in the original contract of hire. After October 14, 2018, the employer only had on-call hours available to the claimant.

The claimant continues to work as needed for the employer and part-time with Cracker Barrel. She is attempting to return to full-time employment with Cracker Barrel. The claimant has

reported wages earned each week she has filed a claim for unemployment insurance benefits. The wages earned each week are less than \$299.00 or her weekly benefit amount plus fifteen dollars.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is partially unemployed effective December 2, 2018. Benefits are allowed.

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 96.19(38) provides:

Definitions.

38. 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:

Employer contributions and reimbursements.

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.

Because the claimant is not currently employed under the same hours and wages as contemplated at hire, she is considered partially unemployed. Benefits may be allowed based upon reporting of weekly earnings. As the employer is not in the claimant's base period, all charges for unemployment insurance benefits are being charged to the account of the base period employer.

DECISION:

The January 18, 2019, reference 03, unemployment insurance decision is modified in favor of the appellant. The claimant is partially unemployed and benefits are allowed, provided she is otherwise eligible. She is required to report gross wages earned for each week of benefits claimed. The employer's account (546907) shall not be charged for any of the unemployment insurance benefits paid as it is not a base period employer.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn