

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHELSEY C HOLLINGER
Claimant

APPEAL 21A-UI-09058-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BOYER VALLEY COMMUNITY SCHOOL
Employer

OC: 03/15/20
Claimant: Appellant (4R)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.19(38)B – Total, Partial, Temporary Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Same Wages

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the March 19, 2021 (reference 01) unemployment insurance decision that denied unemployment insurance benefits effective March 15, 2020 finding that the claimant was still employed in her job at the same hours and same wages as her original contract of hire. After due notice was issued, a telephone hearing was held on June 15, 2021. The claimant participated personally. The employer participated through witness Sharon Lee. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Is the claimant eligible for total, partial, or temporary unemployment benefits?
Is the claimant able to and available for work?
Is the claimant still employed at the same hours and same wages?
Is the employer's account subject to charges?

FINDINGS OF FACT:

Having heard the testimony and having examined the evidence in the record, the administrative law judge finds: Claimant began working for this employer on October 16, 2017 as a care associate at the employer's daycare. Claimant started as a part-time employee and then transitioned to a full-time employee shortly thereafter. When claimant accepted the full-time employment offer, she was aware that she would not be guaranteed 40 hours per week during the summer months as the daycare had less children attending it in the summertime.

ONLINE RESOURCES:

UI law and administrative rules:

<https://www.iowaworkforcedevelopment.gov/unemployment-insurance-law-and-administrative-rules>

UI Benefits Handbook:

<https://www.iowaworkforcedevelopment.gov/unemployment-insurance-claimant-handbook>

Employer UI Handbook: <https://www.iowaworkforcedevelopment.gov/employer-handbook>

Report UI fraud: <https://www.iowaworkforcedevelopment.gov/report-fraud>

Employer account access and information: <https://www.myiowaui.org/UITIPTaxWeb/>

National Career Readiness Certificate and Skilled Iowa Initiative: <http://skillediowa.org/>

Claimant filed an original claim for unemployment insurance benefits effective March 15, 2020 when she learned the daycare would be closing due to the COVID-19 public health emergency. Her established weekly benefit amount was \$205.00. However, the employer agreed to pay the claimant her regular full-time wages at 40 hours per week at her regular rate of \$9.50 per hour. Claimant filed a weekly claim for unemployment insurance benefits for the week-ending March 21, 2020 and reported earning \$38.00 in gross weekly wages that week. The claimant earned \$380.00 for that week in gross wages (40-hours times her hourly rate of pay of \$9.50).

Claimant again filed weekly-continued claims beginning May 10, 2020 when she learned she would not be put on the schedule because there were less children during the summer. Claimant worked May 1, 2020 and then did not work the rest of the month of May, 2020 due to lack of work. Claimant filed weekly-continued claims for benefits for the week-ending May 16, 2020; May 23, 2020; and May 30, 2020. She reported earning wages of \$76.00 for the week-ending May 16, 2020 and \$76.00 for the week-ending May 23, 2020. She reported \$0.00 for the week-ending May 30, 2020.

The week-ending June 6, 2020, the claimant worked 27.25 hours. The week-ending June 13, 2020, the claimant worked 29.25 hours. The week-ending June 20, 2020, the claimant worked 33.00 hours. She filed weekly-continued claims for each of those three weeks in June of 2020, but was not paid benefits as she earned gross wages in excess of her weekly-benefit amount, plus \$15.00. The claimant's misreporting of wages earned from March 15, 2020 through May 30, 2020 will be remanded to the Benefits Bureau for an initial investigation and determination of any overpayment or underpayment of benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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", subparagraph (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".

(emphasis added).

Iowa Code § 96.19(38)b provides:

As used in this chapter, unless the context clearly requires otherwise:

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 § 96.7(2)a(2)a provides:

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.

(emphasis added).

Iowa Admin. Code r. 871-24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

Iowa Admin. Code r. 871-24.18 provides:

Wage-earnings limitation. An individual who is partially unemployed may earn weekly a sum equal to the individual's weekly benefit amount plus \$15 before being disqualified for excessive earnings. If such individual earns less than the individual's weekly benefit amount plus \$15, the formula for wage deductions shall be a sum equal to the individual's weekly benefit amount less that part of wages, payable to the individual with

respect to that week and rounded to the lower multiple of one dollar, in excess of one-fourth of the individual's weekly benefit amount.

This rule is intended to implement Iowa Code § 96.3, 96.4 and 96.19(38).

In this case, the claimant incorrectly reported the gross wages she earned for the week-ending March 21, 2020 and she earned gross wages in excess of her weekly-benefit amount, plus fifteen dollars. As such, she was not totally, partially or temporarily unemployed for the week-ending March 21, 2020 and benefits are denied for that one-week period.

For the week-ending May 16, 2020; May 23, 2020; and May 30, 2020, the claimant was not working nor earning any wages as the employer lacked work for her. The claimant incorrectly reported earning wages for the week-ending May 16, 2020 and May 23, 2020 as she did not earn any wages those two weeks. As such, for the week-ending May 16, 2020, May 23, 2020, and May 30, 2020, the claimant was totally unemployed and benefits are allowed for that three-week period.

For the week-ending June 6, 2020; June 13, 2020; and June 20, 2020, the claimant earned wages in excess of her weekly-benefit amount plus fifteen dollars and was working her regular summer time hours. Because the employer was providing the same employment during this time that she received in her base period, the claimant was not totally, partially, or temporarily unemployed and benefits are denied for that three-week period of time.

DECISION:

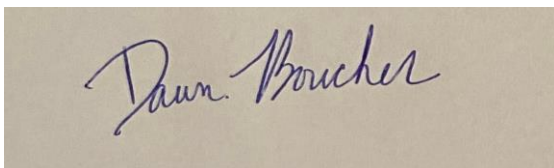
The March 19, 2021 (reference 01) decision is modified in favor of the appellant. Claimant was not totally, partially, or temporarily unemployed for the week-ending March 21, 2020 and benefits are denied for that one-week period.

From May 10, 2020 through May 30, 2020, the claimant was totally unemployed due to lack of work. Unemployment insurance benefits are allowed for that three-week period.

From May 31, 2020 through June 20, 2020, the claimant was working the same hours and same wages as her original contract of hire. Benefits are denied effective May 31, 2020 as the claimant was still employed for the same hours and wages as her original contract of hire and was not totally, partially, or temporarily unemployed.

REMAND:

The issue of the claimant's misreporting of wages earned during the weeks of March 15, 2020 through May 31, 2020 shall be remanded to the Benefits Bureau for an initial investigation and determination of any applicable overpayment or underpayment of benefits.

A rectangular box containing a handwritten signature in blue ink that reads "Dawn Boucher".

Dawn Boucher
Administrative Law Judge

June 28, 2021
Decision Dated and Mailed

db/lj