

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CAMILLA M MILLS**  
Claimant

**APPEAL NO. 17A-UI-09406-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**U S WINDOW INC**  
Employer

**OC: 08/13/17**  
**Claimant: Appellant (4)**

Iowa Code Section 96.4(3) – Able & Available  
Iowa Administrative Code rule 871-24.23(26) – Partial Unemployment  
Iowa Code Section 96.5(1) - Layoff

**STATEMENT OF THE CASE:**

Camilla Mills filed a timely appeal from the September 5, 2017, reference 03, decision that denied benefits effective August 13, 2017, based on the claims deputy's conclusion that Ms. Mills was not partially unemployed from U.S. Window. After due notice was issued, a hearing was held on October 2, 2017. Ms. Mills participated in the hearing. Angela Francis represented the employer. The parties waived formal notice on the issues of whether Ms. Mills was laid off, was discharged for misconduct in connection with the employment and/or voluntarily quit with or without good cause attributable to the employer. Exhibit A was received into evidence. The administrative law judge took official notice of the following agency administrative records: DBRO, KCCO and the September 5, 2017, reference 01, decision.

**ISSUES:**

Whether Ms. Mills has been able to work and available for work since she established the claim for benefits that was effective August 13, 2017.

Whether Ms. Mills has been partially unemployed from U.S. Window since she established the claim for benefits that was effective August 13, 2017.

Whether Ms. Mills separated from U.S. Window for a reason that disqualifies her for unemployment insurance benefits.

Whether the employer's account may be assessed for benefits paid to Ms. Mills.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Camilla Mills began her employment with U.S. Window, Inc. in July 2016 and last performed work for that employer on or about September 23, 2017. Ms. Mills began the employment as a full-time telemarketer and continued in the employment as a full-time employee until July 17, 2017. Ms. Mills' full-time work hours were 11:00 a.m. to 7:00 p.m., Monday through Thursday, 10:00 a.m. to 1:00 p.m. Friday, and 9:00 a.m. to 1:00 p.m., Saturday. Ms. Mills' wage for the

full-time employment was \$12.50 per hour. Angela Francis was Ms. Mill's immediate supervisor.

On July 17, 2017, Ms. Mills commenced new, full-time employment with Rose International, Inc. Ms. Mills accepted the new employment because it offered better pay and better benefits. Ms. Mills' salary at Rose International was \$40,000.00 per year. The work hours at Rose International were 8:00 a.m. to 5:00 p.m., Monday through Friday. In connection with her acceptance of the new employment, Ms. Mills and Ms. Francis entered into an agreement to continue Ms. Mills' employment at U.S. Window, Inc., but to convert the employment to part-time employment. Under the agreement, Ms. Mills was to work 12 hours per week. The new work hours were to be 5:00 p.m. to 7:00 p.m., Monday through Thursday and 9:00 a.m. to 1:00 p.m. on Saturday. Ms. Mills' hourly wage remained \$12.50. Once the part-time work hours went into effect, Ms. Mills was frequently unable to fulfill the part-time work hours due to conflict with her full-time work schedule at Rose International.

On Monday, August 14, 2017, Rose International discharged Ms. Mills from that employment. Iowa Workforce Development adjudicated the separation and concluded Ms. Mills was discharged for no disqualifying reason. See the September 5, 2017, reference 01, decision.

In response to being discharged from her full-time employment at Rose International, Ms. Mills established an original claim for unemployment insurance benefits that was deemed effective August 13, 2017. Workforce Development set Ms. Mills' weekly benefit amount at \$221.00. Ms. Mills base period for purposes of the claim consists of the second, third and fourth quarters of 2016 and the first quarter of 2017. U.S. Window, Inc., is the primary base period employer. Ms. Mills has made seven weekly claims, with the most recent weekly claim being made on Sunday, October 1, 2017 for the benefit week that ended September 30, 2017.

When Ms. Mills made her weekly unemployment insurance claim for the week that ended August 19, 2017, she reported \$81.00 in vacation pay benefits. Ms. Mills received those benefits in connection with her separation from Rose International. During the week that ended August 19, 2017, Ms. Mills applied for two full-time jobs. During the week that ended August 19, 2017, U.S. Window did not have any work hours available for Ms. Mills. On August 15 or 16, Ms. Mills spoke with Ms. Francis regarding her separation from Rose International and her desire for work hours at U.S. Window. Ms. Francis told Ms. Mills that she had hired new staff and would only be able to provide the 12 hours per week agreed to as part of the change to part-time employment.

During the weeks that ended August 26, September 2, September 9, September 16, and September 23, Ms. Mills applied for two or more jobs and worked the 12 hours that U.S. Window had available for her. Ms. Mills' gross wages for each week were \$150.00. Ms. Mills reported the wages when she made her weekly claims.

On September 24, 2017, Ms. Francis notified Ms. Mills that U.S. Window would have not work for her for the foreseeable future. In other words, U.S. Window laid Ms. Mills off effective September 24, 2017. During this week that ended September 30, 2017, Ms. Mills applied for two or more jobs.

Since Ms. Mills established her claim for benefits, she has not had any medical issues that impacted her ability to perform full-time work or her availability for full-time work.

#### **REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge will first address Ms. Mills' separation from U.S. Window, Inc. and the impact of the separation on both Ms. Mills' eligibility for unemployment insurance benefits and that employer's liability for benefits.

Workforce Development rule 871 IAC 24.1(113) provides as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

Iowa Code section 96.5(1) provides that a claimant will be disqualified for benefits, and the employer's account will be relieved of liability for benefits, if the claimant voluntarily quits without good cause attributable to the employer. Iowa Code section 96.5(2)(a) provides that a claimant will be disqualified for benefits, and the employer will be relieved of liability for benefits, if the claimant is discharged for misconduct in connection with the employment. No such disqualification or relief from liability applies when the claimant has been laid off due to a lack of work.

The evidence in the record establishes that U.S. Window laid off Ms. Mills effective September 24, 2017. The layoff did not disqualify Ms. Mills for benefits. Based on the layoff, Ms. Mills would be eligible for benefits, provided she meets all other eligibility requirements. Because the September 24, 2017 separation was a layoff, the employer account of U.S. Window, Inc. may be charged for benefits for the period beginning September 24, 2017.

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 Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

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. Iowa Code Section 96.19(38)(b). 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 96.19(38)(c).

Iowa Administrative Code rule 871-24.23(26) provides as follows:

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

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. 871-23.43(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....

From the time that Ms. Mills established her claim on August 13, 2017 through the benefit week that ended September 23, 2017, Ms. Mills was able to perform full-time work and was available for full-time employment. In addition, Ms. Mills was engaged in an active and earnest search for full-time employment during that time. During that time, Ms. Mills was unemployed from her full-time employment through no fault of her own. Accordingly, Ms. Mills was eligible for benefits for the period August 13, 2017 through September 23, 2017, provided she met all other eligibility requirements. During that period, Ms. Mills continued to perform work for U.S. Window, Inc., pursuant to the 12-hour per week agreement the parties entered into when Ms. Mills began the full-time employment at Rose International. Accordingly, Ms. Mills cannot be said to be partially unemployed from U.S. Window, Inc. during the period of August 13, 2017 through September 23, 2017. The determination that Ms. Mills was not partially laid off from what had become part-time, supplemental employment, does not disqualify her for unemployment

insurance benefits for the period of August 13, 2017 through September 23, 2017, but it does relieve the employer account of U.S. Window, Inc. for benefits paid to Ms. Mills during that period.

From September 24, 2017, the date of the layoff from U.S. Window, Inc., to the present, Ms. Mills has continued to be without employment through no fault of her own. She has continued to be able to perform full-time work and to be available for full-time employment. She has continued to engage in an active and earnest search for new full-time employment. Accordingly, Ms. Mills is eligible for benefits from September 24, 2017, to the present, provided she meets all other eligibility requirements. As indicated above, the employer account of U.S. Window, Inc. may be charged for benefits for the period beginning September 24, 2017.

**DECISION:**

The September 5, 2017, reference 03, decision is modified as follows. The claimant has been able to work full-time, available for full-time employment, and has been engaged in an active and earnest search for new employment since she established her claim for unemployment insurance benefits on August 13, 2017. The claimant is eligible for benefits effective August 13, 2017, provided she meets all other eligibility requirements. During the period of August 13, 2017 through September 23, 2017, the claimant was not partially unemployed from her part-time, supplemental employment at U.S. Window. Accordingly, the employer account of U.S. Window will not be charged for benefits for the period of August 13, 2017 through September 23, 2017. Benefits paid to the claimant for the period of August 13, 2017 through September 23, 2017 will instead be assessed to the unemployment insurance compensation trust fund. The claimant was laid off from U.S. Window effective September 24, 2017. The layoff did not disqualify the claimant from benefits and the claimant remained eligible for benefits, provided she met all other eligibility requirements. Based on the September 24, 2017 layoff, the employer account of U.S. Window, Inc. may be charged for benefits for the period beginning September 24, 2017.

---

James E. Timberland  
Administrative Law Judge

---

Decision Dated and Mailed

jet/rvs