

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

SUZAN J ROGGENDORF
233 – 19TH PL
CLINTON IA 52732

APAC CUSTOMER SERVICES INC
C/O TALX – UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-07815-SWT
OC: 06/20/04 R: 04
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4-3 – Availability for Work
871 IAC 23.43(4) - Supplemental Employment

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated July 16, 2004, reference 02, that concluded she was still employed for the same hours and wages as in her original contract of hire and, therefore, was not eligible for partial unemployment insurance benefits. A telephone hearing was held on August 10, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing. Amber Nielson participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

The claimant worked full time for Medical Associates from September 2001 to June 2003. She filed a claim for unemployment insurance benefits based on this full time employment and received benefits through March 2004.

The claimant began working part-time (33 hours per week at \$6.00 per hour) for the employer on March 16, 2004. She applied for unemployment insurance benefits with an effective date of June 20, 2004. Her weekly benefit amount was determined to be \$213.00 per week based on her full time employment at Medical Associates. The claimant began filing for partial unemployment insurance benefits because her wages were below her earnings limit.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim.

REASONING AND CONCLUSIONS OF LAW:

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".

The claimant is able to and available for work. She filed for benefits because her regular employer laid her off and her supplemental employment as with the employer does not disqualify her from receiving unemployment insurance benefits. The Agency apparently relied on 871 IAC 24.23(26) in denying benefits to the claimant.

871 IAC 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.

This section does apply to the facts in this case where the claimant is applying for benefits after she was laid off by his regular employer. It should only be used when the claimant applies for partial unemployment insurance benefits from a base-period employer who continues to employ the claimant for the same number of hours and wages as established at the time of hire. Instead, this case is governed by 871 IAC 23.43(4)a, which deals with a situation where an individual has supplemental employment in addition to her regular employment.

871 IAC 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 is eligible for benefits, and the employer's account is exempt from charge for benefits paid to the claimant as long as the employer provides the claimant with the same wages and hours.

DECISION:

The unemployment insurance decision dated July 16, 2004, reference 02, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

saw/kjf