

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NICOLE D TUCKER
Claimant

NEW CHOICES INCORPORATED
Employer

APPEAL 20A-UI-00333-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/08/19
Claimant: Respondent (2)**

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
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 § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

On January 10, 2020, New Choices Incorporated (employer) filed an appeal from the January 7, 2020, reference 01, unemployment insurance decision that allowed benefits effective December 8, 2019, based on the determination Nicole D. Tucker (claimant) is partially unemployed and considered able to and available for work. After due notice was issued, a telephone conference hearing was held on January 30, 2020. The claimant did not respond to the hearing notice and did not participate. The employer participated through Heather Friis Bulten, Human Resources Coordinator. No exhibits were offered into the record.

ISSUES:

Is the claimant partially unemployed effective December 8, 2019?
Is the claimant available for work effective December 8, 2019?
Is the employer's account subject to charge?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant is employed part-time as a Direct Support Professional. She began employment on February 6, 2017. When she was hired, the employer told her that her hours would vary based on business needs.

On or about November 19, 2019, the employer received notice that the claimant had worn a client's shoes home and the client was missing twenty dollars. The employer asked the claimant about the situation. She admitted having the shoes and stated she forgot to return the client's change from the money they had spent that day. The claimant returned the shoes and money the following day. The client's parent asked the claimant to be removed as a caregiver for the client.

The employer ended the claimant's assignment with that particular client and, as a result, her hours were reduced. The claimant received a warning. She still works with another regular client and is currently seeking additional work with the employer.

The claimant filed her claim for unemployment insurance benefits effective December 8, 2019 and her weekly benefit amount is \$191.00. She filed one weekly claim for the week ending December 14. The claimant reported \$93.00 in wages earned that week.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not partially or totally unemployed. The issues availability for work and the chargeability of the employer's account are moot at this time. Benefits are denied.

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", 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 § 96.19(38) 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.

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.

Under Iowa Employment Security Law, an individual must be totally or partially unemployed to be eligible for benefits. Iowa Code § 96.19(38). Total unemployment is when someone has received no wages and performed no services during any given week. *Id.* In this case, the claimant performed services and earned wages for the week she claimed benefits. She is not totally unemployed.

The next question is whether she is partially unemployed. In order to be partially unemployed, an individual must be laid off from full-time employment or working less than his or her regular full-time work week. *Id.* If an individual is employed in a part-time position working the same hours and wages as contemplated at hire, he or she cannot be considered partially unemployed. Iowa Admin. Code r. 871-24.23(26).

In this case, the claimant was hired into a part-time position. She has worked part-time hours during her entire employment. Her hours have fluctuated as expected when she was hired. She continues to work for the employer. As the claimant is working in a part-time job in the same hours and wages contemplated at hire, she is not partially unemployed.

As the claimant is not partially unemployed nor has she had any weeks of total unemployment, the issues of her availability for work and the chargeability of the employer's account are moot at this time.

DECISION:

The January 7, 2020, reference 01, unemployment insurance decision is reversed. The claimant is not partially unemployed and benefits are denied. The issues of availability for work and the chargeability of the employer's account are moot at this time.



Stephanie R. Callahan
Administrative Law Judge

February 5, 2020
Decision Dated and Mailed