

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SONJA K COTTON

Claimant

APPEAL 18A-UI-04699-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CHARLES CITY COMMUNITY SCHOOL DIS

Employer

OC: 07/02/17

Claimant: Respondent (4)

Iowa Code § 96.19(38)b – Partial Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

The employer filed an appeal from the April 10, 2018, (reference 06) unemployment insurance decision that allowed benefits beginning February 18, 2018. The parties were properly notified about the hearing. A telephone hearing was held on May 10, 2018. Claimant did not register for the hearing and did not participate. Employer participated through human resources administrative assistant Patricia Bahlmann. Official notice was taken of the administrative record with no objection.

ISSUES:

Is the claimant eligible to receive partial benefits?

Is the claimant able to and available for work effective February 18, 2018?

Is the claimant still employed at the same hours and wages?

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: On November 6, 2017, the employer hired claimant as a part-time substitute bus driver. On November 13, 2017, the employer then hired claimant as a part-time permanent bus driver. Although claimant is classified as a bus driver, she drives a car for the employer. Claimant is responsible for transporting students to and from various locations. Since November 13, 2017, claimant averages approximately twenty hours per week. The employer guarantees claimant 2.6 hours per day when school is in session. Since claimant was hired as a permanent employee on November 13, 2017, claimant's hours/schedule has not changed. Since claimant was hired as a permanent employee on November 13, 2017, her pay rate has not changed. The employer has not reduced claimant's hours or pay rate.

Claimant still works for the employer (CHARLES CITY COMMUNITY SCHOOL DIS), part-time, under the same terms and conditions as contemplated at hire. The employer is not a base period employer. The administrative record reflects claimant has only one employer (FLOYD COUNTY) in her base period history.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is partially unemployed and this part-time employer is relieved of benefit charges.

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:

"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:

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.

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....

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

Benefit 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.

f. Part-time worker, student-other. Part-time worker shall mean any individual who has been in the employ of an employing unit and has established a pattern of part-time regular employment which is subject to the employment security tax, and has accrued wage credits while working in a part-time job. If such part-time worker becomes separated from this employment for no disqualifiable reason, and providing such worker has reasonable expectation of securing other employment for the same number of hours worked, no disqualification shall be imposed under Iowa Code section 96.4(3). In other words, if an individual is available to the same degree and to the same extent as when the wage credits were accrued, the individual meets the eligibility requirements of the law.

On November 13, 2017, the employer hired claimant as a part-time permanent bus driver. Since claimant was hired as a permanent employee on November 13, 2017, claimant's hours/schedule and pay rate have not changed. Because claimant has other base-period wages and is currently employed part-time, she may be considered partially unemployed. Partial benefits may be allowed if she is otherwise eligible. Inasmuch as the current part-time employer (CHARLES CITY COMMUNITY SCHOOL DIS, account number 101981-000) is offering the same wages and hours as contemplated at hire and is not in claimant's base period, no benefit charges shall be made to its account.

For any week of benefits claimed, claimant must report gross wages earned that week to establish whether or not she is eligible for partial unemployment benefits.

DECISION:

The April 10, 2018, (reference 06) unemployment insurance decision is modified in favor of the appellant. Claimant is partially unemployed and benefits are allowed, provided she is otherwise eligible. The account of the current part-time employer CHARLES CITY COMMUNITY SCHOOL DIS (account number 101981-000) shall not be charged. Any benefits claimed and withheld on this basis shall be paid provided claimant is otherwise eligible. Claimant should report gross wages for the week in which they are earned for the purpose of establishing continuing eligibility for partial unemployment benefits.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs