

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JENNIFER MILLER
Claimant

KUM & GO LC
Employer

APPEAL 20A-UI-01847-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/02/20
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.19(38)B – Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the February 26, 2020 (reference 06) unemployment insurance decision that found claimant was not eligible for unemployment benefits because she was working enough hours to be considered employed. The parties were properly notified of the hearing. A telephone hearing was held on March 17, 2020. The claimant, Jennifer Miller, participated personally. The employer, Kum & Go, LC, participated through witness Bryan Luft. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Is the claimant eligible for total or partial unemployment benefits?
Is the claimant able to and available for work?
Is the employer's account subject to charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed for this employer beginning July 16, 2019. Claimant was hired as a full-time Sales Associate II at the employer's convenience store. She worked at least 40 hours per week and was guaranteed 40 hours per week.

In October of 2019, Mr. Luft met with the claimant about her job performance. The employer felt that the claimant was not meeting the job expectations of a Sales Associate II because she was not properly monitoring the outside areas and other Captainship Job Duties that the employer had assigned to her. At or about that same time, the claimant developed a chronic illness and sought treatment. Her chronic illness caused her to miss work on occasion.

In January of 2020, Mr. Luft told the claimant she would no longer be able to work full-time as a Sales Associate II because she was still not performing her job duties as expected. However, instead of discharging the claimant, Mr. Luft moved claimant to a part-time sales associate position. This position does not have a set schedule but the claimant works when other associates are absent from work.

Since filing her original claim for unemployment insurance benefits effective February 2, 2020, claimant has worked the following hours per week: For the week-ending February 8, 2020, the claimant worked 23 hours. For the week-ending February 15, the claimant worked 18.5 hours. For the week-ending February 22, 2020, the claimant worked 14.5 hours. For the week-ending February 29, 2020, the claimant worked 11 hours. For the week-ending March 7, 2020, the claimant worked 12.5 hours. For the week-ending March 14, 2020, the claimant worked 8 hours. Claimant's administrative records establish that wages earned with this employer include the wages earned in the third quarter of 2019, when the claimant was working her full-time position.

Claimant's chronic illness is currently controlled by medication. She is able to and available for full-time work.

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".

Iowa Code § 96.19(38) 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).

In this case, the claimant was hired to work full-time, with a guaranteed 40 hours per week work schedule. The employer unilaterally changed the claimant's position from full-time to part-time. Claimant has been able to and available for full-time work.

The claimant has worked during each week in which she has filed her weekly-continued claims for benefits. As such, she is deemed partially unemployed in any week in which she works less than the regular full-time week and in which she earns less than her weekly benefit amount plus fifteen dollars. Iowa Code § 96.19(38)b(1). The claimant must report all gross wages earned during each week she files her weekly-continued claim for benefits. Benefits are allowed, provided the claimant remains otherwise eligible.

DECISION:

The February 26, 2020 (reference 06) decision is reversed. Claimant is partially unemployed. Benefits are allowed effective February 2, 2020, and provided the claimant is otherwise eligible. Claimant must report all gross wages earned for each week in which she files weekly-continued claims for benefits.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/scn