

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

PAMELA S ERLEWINE
Claimant

APPEAL NO. 14A-UI-09896-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 08/17/14
Claimant: Appellant (2-R)

Section 96.4-3 - Able to and Available for Work
Section 96.19-38-b - Eligibility for Partial Unemployment Insurance Benefits

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated September 18, 2014, reference 04, that concluded she was still employed the same hours and wages and could not be considered partially unemployed . A telephone hearing was held on October 14, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. No one participated in the hearing on behalf of the employer.

ISSUES:

Is the claimant eligible for partial unemployment insurance benefits?
Was the claimant able to and available for work?

FINDINGS OF FACT:

The claimant originally filed for unemployment insurance benefits with an effective date of August 18, 2013. She filed for benefits after her employment with Foxy's Bar ended when the business closed. The claimant also had full-time employment with Prairie Meadows prior to filing her claim in 2013.

The claimant did not start working for Casey's Marketing Company until September 2013, after she filed the claim for benefits. The job was part-time with no guarantee as to the number of hours of work per week. She worked for Casey's Marketing Company until November 2013 when she accepted a job with Biggy's Italian American Restaurant in Osceola. She worked for Biggy's from November 2014 to March 2014 when the employment ended.

The claimant filed a claim for a second benefit year effective August 17, 2014. Her weekly benefit amount was determined to be \$404 based on her full-time employment with Prairie Meadows. Around the same time she filed for unemployment insurance benefits, she went back to work part-time for Casey's Marketing Company. Again, she was working part-time with no guarantee as to the number of hours she would work.

Since August 17, 2014, the claimant has had weeks in which her wages were below her weekly benefit amount. The claimant continues to look for full-time work.

For some reason, Biggy's Italian American Restaurant has not reported any wages for the claimant, and there is no evidence that the Biggy's Italian American Restaurant has ever been notified about the claim for benefits, either during the 2013 benefit year or this year.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was eligible for partial unemployment insurance benefits effective August 18, 2014. The claimant filed a claim requesting partial unemployment insurance benefits for the weeks in which her earnings were less than the weekly benefit amount.

Iowa Code § 96.3-3 provides:

3. Partial unemployment. An individual who is partially unemployed in any week as defined in section 96.19, subsection 38, paragraph "b", and who meets the conditions of eligibility for benefits shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. The benefits shall be rounded to the lower multiple of one dollar.

Iowa Code § 96.19-38-b provides in part:

b. An individual shall be deemed partially unemployed in any week in which, having been separated from individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

The evidence establishes she was entitled to partial unemployment insurance benefits since she was working part time and her earnings were less than her weekly benefit amount plus \$15.00. This was clearly supplemental employment that the claimant took while continuing to look for full-time work.

The unemployment insurance law provides that an individual be able to and available for work. Iowa Code § 96.4-3. The claimant was able to and available to work and did not restrict the number of hours she was willing to work.

The final issue is whether the employer's account is subject to charge for benefits paid to the claimant.

The wages that are in the claimant's base period are actually wages from a previous period of employment, which the claimant voluntarily left to accept other employment. The employer's account is not subject to charge for benefits because under Iowa Code § 96.5-1-a, a quit for other employment is not disqualifying and the employer's account is not chargeable.

The matter of investigating why wages were not reported for the claimant by Biggy's Italian American Restaurant and deciding if the claimant is disqualified and Biggy's Italian American Restaurant is chargeable for benefits based on her separation from employment in March 2014 is remanded to the Agency.

The claimant remained disqualified for the period between August 31 and September 13, 2014, based on a decision that concluded she was not able to work during that period, which was not appealed.

DECISION:

The unemployment insurance decision dated September 18, 2014, reference 04, is reversed. The claimant is qualified for partial unemployment insurance benefits, if she is otherwise eligible. The employer is not subject to charge for benefits paid to the claimant.

The matter of investigating why wages were not reported by Biggy's Italian American Restaurant and deciding if the claimant is disqualified and Biggy's Italian American Restaurant is chargeable for benefits based on her separation from employment is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs