

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NICOLLE GOOD
Claimant

CONNECTION BANK
Employer

APPEAL 19A-UI-09920-AD-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 11/25/18
Claimant: Appellant (1)

Iowa Code § 96.19(38) – Total, partial unemployment
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages
Iowa Code § 96.7(2)a(2) – Charges – Same base period employment

STATEMENT OF THE CASE:

On December 16, 2019, Nicolle Good (claimant/appellant) filed a timely appeal from the December 13, 2019 (reference 07) unemployment insurance decision that determined claimant was not eligible to receive unemployment insurance benefits. Specifically, the decision determined claimant was working to such an extent that she had removed herself from the labor market and thus was not available for employment, effective December 9, 2018.

The parties were properly notified of the hearing. A telephone hearing was held on January 13, 2020 at 9 a.m. Claimant participated personally. Employer participated by HR Manager Donna Bratek.

Official notice was taken of claimant's payment and wage history on the department's information database. Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the claimant totally, partially, or temporarily unemployed?
- II. Is the claimant able to and available for work?
- III. 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:

Claimant is currently employed by employer. She has worked full-time, between 32 and 40 hours per week, since her hire on December 3, 2018. She earns approximately \$11.00 per hour in her position. She is not employed anywhere else at this time.

Claimant was previously employed full-time at IH Mississippi Valley Credit Union. Her employment there ended December 1, 2018, when the business closed. She earned approximately \$15.00 per hour in that position, plus incentives. She was not employed anywhere else at that time.

Claimant was instructed by an IWD representative to continue filing claims and doing work searches, even though she informed the representative that she was employed full-time. She followed that direction and continued to do so.

The unemployment insurance system shows claimant's weekly benefit amount was \$457.00. Claimant has filed weekly claims from the benefit week ending December 1, 2018 through the benefit week ending November 23, 2019. Claimant reported wages for each of those weeks and received benefits averaging about \$150.00 per week. The total amount of benefits paid to date is \$7,470.00.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the December 13, 2019 (reference 07) unemployment insurance decision is AFFIRMED.

I. Is the claimant totally, partially, or temporarily unemployed?

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.

Claimant is not totally, partially, or temporarily unemployed effective with the benefit week ending December 9, 2018. Claimant was and is employed with employer on a full-time basis.

II. Is the claimant able to and available for work?

Iowa Admin. Code r. 871-24.23(23) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

Claimant was not able and available for work effective December 9, 2018, as she was and is working to such a degree that removes her from the labor market.

III. Is the claimant still employed at the same hours and wages? Is the employer's account subject to charge?

Iowa Code section 96.7(2)a(2)(a) 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.

Claimant was not receiving the same employment from a base period employer at the time she was receiving benefits."

The administrative law judge notes the understandable frustration and confusion claimant expressed in the hearing. The administrative law judge is sympathetic to claimant, who filed claims as instructed; received thousands of dollars of benefits over approximately a year; and then just recently learned she was not eligible for benefits during that period, resulting in a substantial overpayment of benefits. See 19A-UI-10189-AD-T.

Claimant acted in good faith and now must feel she's had the rug pulled out from under her. Why it took approximately a year for the department to determine there was an availability issue and make a fact-finding determination on that issue is puzzling to the administrative law judge. However, as explained in 19A-UI-10189-AD-T, the administrative law judge has no authority to waive the overpayment or otherwise relieve claimant of those charges.

DECISION:

The December 13, 2019 (reference 07) unemployment insurance decision is **AFFIRMED**. Claimant is not eligible for benefits effective December 9, 2018, as she was working to such a degree that removed her from the labor market.

Andrew B. Duffelmeyer
Administrative Law Judge

Decision Dated and Mailed

abd/scn