

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

NATALIE F QUINN
Claimant

APPEAL NO. 19A-UI-01074-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FBG SERVICE CORPORATION
Employer

OC: 12/30/18
Claimant: Appellant (5R)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.19(38)(b) – Partially Unemployed
Iowa Code section 96.7(2) – Employer Liability

STATEMENT OF THE CASE:

Natalie Quinn filed a timely appeal from the January 31, 2019, reference 01, decision that denied benefits effective December 30, 2018, based on the deputy's conclusion that Ms. Quinn was not partially unemployed within the meaning of the law. After due notice was issued, a hearing was held on February 21, 2019. Ms. Quinn participated. The employer did not participate and provided written notice that it waived participation in the appeal hearing. The administrative law judge took official notice of the following Agency administrative records: KCCO and DBRO. Exhibit A was received into evidence.

ISSUES:

Whether Ms. Quinn had been able to work and available for work since December 30, 2018.

Whether Ms. Quinn has been partially unemployed since December 30, 2018.

Whether the employer's account may be assessed for benefits paid to Ms. Quinn.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Natalie Quinn is employed by FBG Service Corporation as a part-time custodian. Ms. Quinn began the employment in 2016. Ms. Quinn established an original claim for unemployment insurance benefits that was effective December 30, 2018. Iowa Workforce Development set Ms. Quinn's weekly benefit amount at \$264.00. Ms. Quinn established the claim for unemployment insurance benefits in response to a reduction in the number the work hours the employer had available for her. The employer notified Ms. Quinn that her work hours were being cut because the employer lost the cleaning account for the Ankeny public library. Ms. Quinn had been assigned to clean at the Ankeny public library. Ms. Quinn was on an approved vacation during the period of December 23-29, 2018. While Ms. Quinn was on vacation, the library terminated its contract with FBG and FBG notified Ms. Quinn of the cut in hours.

As of the February 21, 2019 appeal hearing, Iowa Workforce Development had documented six consecutive weekly claims for Ms. Quinn for the weeks between December 30, 2018 and February 9, 2019. Ms. Quinn has not been personally making the weekly claims. Ms. Quinn's friend has been making the weekly claims on Ms. Quinn's behalf. Ms. Quinn's friend has been reporting erroneous wage information to Iowa Workforce Development as part of the weekly

claims. Since Ms. Quinn established the claim for benefits, she has continued to perform work for FBG under the reduced hour arrangement. Since Ms. Quinn established her claim for benefits, she has performed all of the work that FBG has for her. Ms. Quinn continues to work on an FBG account that pays \$10.50 per hour and another FBG account that pays \$12.50 per hour. Since Ms. Quinn established her claim for benefits, she has been consistently receiving 16 hours of work per week from FBG. Effective January 1, 2019, Ms. Quinn commenced additional employment with the Salvation Army. The work for Salvation Army pays \$8.00 per hour and provides 27 hours of work every two weeks.

REASONING AND CONCLUSIONS OF LAW:

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".

An individual shall be deemed partially unemployed in any week in which, 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. Iowa Code Section 96.19(38)(b).

Iowa Code section 96.7(1) and (2) provides, in relevant part, as follows:

Employer contributions and reimbursements.

1. Payment. Contributions accrue and are payable, in accordance with rules adopted by the department, on all taxable wages paid by an employer for insured work.

2. Contribution rates based on benefit experience.

a. (1) The department shall maintain a separate account for each employer and shall credit each employer's account with all contributions which the employer has paid or which have been paid on the employer's behalf.

(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.

Ms. Quinn provided rather confused testimony at the appeal hearing that made discerning the pertinent facts a challenge. Nonetheless, it is clear from that testimony that FBG has provided Ms. Quinn with fewer work hours since December 30, 2018 compared to the period that preceded December 30, 2018 unemployment insurance claim. The reduction in FBG work

hours has been involuntary on the part of Ms. Quinn, who did not request reduced hours and who has continued to make herself available for work that FBG has for her. Since the claim went into effect, Ms. Quinn's 16 hours per week of FBG work have provided her with weekly gross wages at or about \$200.00. Since January 1, 2019, Ms. Quinn has had about \$108.00 gross weekly wages from the Salvation Army employment. Between the two employments, Ms. Quinn has earned about \$308.00 in grossly wages for each week between December 30, 2018 and February 9, 2019. Though the evidence establishes that Ms. Quinn had been able to work and available for work since she established her weekly claim for benefits, Ms. Quinn cannot be considered partially unemployed within the meaning of the law because her weekly wages from the two employments exceed her \$264.00 weekly benefit amount by more than \$15.00. Accordingly, Ms. Quinn is not eligible for unemployment insurance benefits. Benefits are denied effective December 30, 2018. This determination is effective for the period of December 30, 2018 through February 16, 2019. Because this decision determined Ms. Quinn to be ineligible for benefits under a theory of partial unemployment, the employer account of FBG will not be charged for benefits for the period of December 30, 2018 through February 16, 2019.

Ms. Quinn must make her own weekly claims and make certain that the information she reports as part of those weekly claims is accurate.

Because the able and available and partial unemployment eligibility requirements involve a week-by-week determination, this matter will be remanded to the Benefits Bureau for determination of whether Ms. Quinn has been able to work, available for work, and/or partially unemployed since February 17, 2019. Such determination should involve scrutiny of work hours and wages from both employments and scrutiny of whether Ms. Quinn's child care duties impacts her availability for work.

DECISION:

The January 31, 2019, reference 01, decision is modified as follows. The claimant was able to work and available for work during the period of December 30, 2018 through February 16, 2019, but was not partially unemployed within the meaning of the law during that period because her combined wages from two employments exceeded her weekly benefit amount by more than \$15.00. The claimant is not eligible for benefits for the period of December 30, 2018 through February 16, 2019. The employer account of FBG will not be charged for benefits for that period.

This matter is remanded to the Benefits Bureau for determination of whether the claimant has been able to work, available for work, and/or partially unemployed since February 17, 2019.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs