

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALYSSA N MARTINEZ
Claimant

SLB OF IOWA LC
Employer

APPEAL 20A-UI-05451-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Respondent (4-R)

Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions
Iowa Code § 96.3(7) – Overpayment of Benefits
Public Law 116-136 § 2104(b) – Federal Pandemic Unemployment Compensation
Iowa Code § 96.7(2)a(2) – Employer Chargeability

STATEMENT OF THE CASE:

On June 8, 2020, SLB of Iowa, LC (employer) filed an appeal from the June 3, 2020, reference 02, unemployment insurance decision that allowed benefits effective March 22, 2020 based upon the determination Alyssa N. Martinez (claimant) was not working in the same manner as her contract of hire but she was able to and available for work. After due notice was issued, a telephone hearing was held on July 16, 2020. The claimant did not respond to the hearing notice and did not participate. The employer participated through Karen Beard, Human Resources Manager. No exhibits were offered into the record. The administrative law judge took official notice of the claimant's claim history.

ISSUES:

Is the claimant totally, partially, or temporarily unemployed?
Was the claimant able to and available for work effective March 22, 2020?
Has the claimant been overpaid regular unemployment benefits and Federal Pandemic Unemployment Compensation (FPUC)?
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: The employer hired the claimant December 1, 2015, as a full-time associate. On March 22, 2020, she filed a claim for unemployment insurance benefits because she was working less than her normal full-time hours. The claimant's weekly benefit amount is \$304. She filed weekly claims for benefits for the four weeks ending April 18 and reported wages earned each week of less than \$319, which is her weekly benefit amount plus fifteen dollars.

The week of April 19, the claimant requested and the employer granted her a leave of absence. Iowa Workforce Development (IWD) has already found the claimant ineligible during that time. However, the administrative record shows the claimant reported wages earned during the weeks ending June 6 and June 13. There was insufficient information to determine whether the claimant is partially unemployed or able to and available for work for those two weeks. Those issues will be remanded to the Benefits Bureau of IWD for review.

REASONING AND CONCLUSIONS OF LAW:

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

For the reasons that follow, the administrative law judge concludes that the claimant was partially unemployed for the four weeks ending April 18 and benefits are allowed.

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", 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 § 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.

Under Iowa Employment Security Law, an individual must be totally, partially, or temporarily unemployed to be eligible for benefits. Iowa Code § 96.19(38). In order to be partially unemployed, an individual must be laid off from regular full-time employment or working less than their regular full-time work week and earn less than their weekly benefit amount plus fifteen dollars. *Id.* In this case, the claimant worked during the four weeks ending April 18 and earned wages that were less than her weekly benefit amount plus fifteen dollars. The claimant was partially unemployed and benefits are allowed.

As she was partially unemployed under 96.19(38)(b)(1), whether she was able to and available for work during that time is moot. As the claimant is eligible for benefits for the only weeks in which she received them, the issues of overpayment are moot.

Whether the claimant is partially unemployed or able to and available for work effective May 31, 2020 is remanded to the Benefits Bureau for review.

II. Is the employer's account subject to charge?

For the reasons that follow, the administrative law judge concludes the employer's account will not be charged for the benefits the claimant received for the four weeks ending April 18.

Iowa Code section 96.7(2)a(2)(a), (b), and (c) provides:

Employer contributions and reimbursements.

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.

Normally, the employer would be charged for the benefits the claimant received from March 22 through April 18. During that time, the employer did not employ the claimant as agreed during her contract of hire. However, due to the pandemic, the charges to the employer's account for those four weeks are waived.

DECISION:

The June 3, 2020, reference 02, unemployment insurance decision is modified in favor of the appellant. The claimant was partially unemployed for the four weeks ending April 18 and benefits are allowed. The employer's account will not be charged for the benefits paid during that period.

REMAND:

Whether the claimant is partially unemployed or able to and available for work effective May 31, 2020 is remanded to the Benefits Bureau for review.



Stephanie R. Callahan
Administrative Law Judge

August 3, 2020
Decision Dated and Mailed

src/sam