

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BECCA R OZEGOVIC**  
Claimant

**APPEAL NO. 19A-UI-02051-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HASE LLC**  
Employer

**OC: 02/10/19**  
**Claimant: Appellant (1)**

Iowa Admin. Code r. 871-24.23(26) – Part-Time Worker – Same Wages and Hours  
Iowa Code § 96.4-3 – Able and Available  
Iowa Code § 96.7(2)A(2) – Partial Benefits

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated March 4, 2019, reference 01, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on March 25, 2019. Claimant participated personally. Employer failed to respond to the hearing notice and did not participate.

**ISSUES:**

Whether claimant is still employed at the same hours and wages?

Whether claimant is eligible to receive partial benefits?

Whether claimant is able and available for work?

**FINDINGS OF FACT:**

The claimant filed this claim on or around February 10, 2019. At that time, claimant still actively worked for employer, part-time under the same terms and conditions as contemplated in the original contract of hire. Claimant separated from employer on or around March 3, 2019. Claimant's filing was mistakenly made in anticipation of the job separation which was to be forthcoming as employer was moving its place of business. Said move placed claimant within the area covered by a covenant not to compete created by claimant's past employer. Claimant and employer were threatened with a lawsuit should claimant continue to work for employer.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was not partially unemployed at the time of her filing for benefits.

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.

Iowa Code § 96.7(2)a(2)(a), (b), and (c) 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.

(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.

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".

As this case was not ripe for review at the time of filing and claimant was not able and available for work, benefits are denied. Inasmuch as the current part-time employer was offering the claimant the same wages and hours at the time of claimant's filing as in the base period, no benefit charges shall be made to its account.

**DECISION:**

The March 4, 2019, reference 01, decision is affirmed. The claimant was not partially unemployed at the time of filing and benefits are denied. The account of the current part-time employer shall not be charged.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

bab/scn