

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AMBER BOONE
Claimant

BOMGAARS SUPPLY INC
Employer

APPEAL 20A-UI-05290-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/12/20
Claimant: Appellant (2)

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 June 4, 2020, Amber Boone (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated June 1, 2020 (reference 01) that denied benefits.

A telephone hearing was held on July 7, 2020. The parties were properly notified of the hearing. Claimant participated personally. Bomgaars Supply Inc (employer/respondent) did not participate.

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 resigned from employment with employer in October 2019 to accept a full-time job at Staples with better hours. Claimant is still employed at Staples. However, claimant's hours at Staples were cut in half due to the pandemic. As a result, claimant returned to work part-time for employer. It was understood at the time of her re-hire at employer that she would only be available part-time, as she was still working part-time at Staples, and would return to her full-time employment at Staples once full-time hours were again available. During this time, claimant worked from 7:30 a.m. to 12:30 p.m. for employer and from 1 p.m. to 5:30 p.m. at Staples.

Nonetheless, employer discharged claimant on May 18, 2020, due to her only being available those morning hours. Claimant is scheduled to begin full-time hours at Staples again on July 13, 2020.

Claimant reported earning \$242.00 for the benefit week ending April 18, 2020; \$422.00 for the week ending April 25; \$393.00 for the week ending May 2; \$393.00 for the week ending May 9; \$155.00 for the week ending May 23; and \$362.00 for the week ending May 30. Her weekly benefit amount is \$358.00.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the Iowa Workforce Development decision dated June 1, 2020 (reference 01) that denied benefits is REVERSED. Claimant was partially unemployed in the benefit weeks ending April 18 and May 23, 2020. Claimant is allowed benefits those weeks, provided she is not otherwise disqualified and meets all other eligibility requirements. Employer's account shall not be charged.

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.

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".

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

2. Contribution rates based on benefit experience.

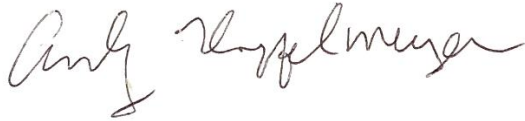
a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(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.

Claimant was partially unemployed in the weeks ending April 18 and May 23, 2020. During these weeks, she was employed at her regular job at Staples but was working less than the full-time week there and earning less than her weekly benefit amount plus \$15.00. Claimant is therefore eligible for benefits those weeks, provided she is otherwise eligible. However, employer's account shall not be charged, as during the weeks in question she was receiving the same employment from employer as contemplated at the time of hire.

DECISION:

The Iowa Workforce Development decision dated June 1, 2020 (reference 01) that denied benefits is REVERSED. Claimant was partially unemployed in the benefit weeks ending April 18 and May 23, 2020. Claimant is allowed benefits those weeks, provided she is not otherwise disqualified and meets all other eligibility requirements. Employer's account shall not be charged.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

July 22, 2020
Decision Dated and Mailed

abd/mh

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for regular unemployment insurance benefits but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.