

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARSHA H TAYLOR
Claimant

WOOLDRIDGE INVESTMENTS LLC
Employer

APPEAL 20A-UI-11476-S1-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Appellant (1/R)

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

Marsha Taylor (claimant) appealed a representative's September 9, 2020, decision (reference 01) that denied benefits based on the claimant's continued employment with Wooldridge Investments (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 10, 2020. The claimant participated personally. The employer participated by Wendy Wooldridge, bookkeeper/owner. The administrative law judge took official notice of the administrative file.

ISSUES:

The issue is whether the claimant is eligible for total or partial unemployment benefits, still employed at the same hours and wages, whether the claimant is able and available for work and/or whether the employer's account is subject to charge.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 15, 2017, as a part-time administrative assistant. She worked thirteen to eighteen hours per week and earned \$11.00 per hour gross.

The claimant also worked part-time for Iowa State University at \$9.00 per hour and part-time for Venuworks of Ames at \$9.60 per hour. On March 15, 2020, these employer's laid the claimant off for lack of work. The claimant continued to work for the employer, Wooldridge Investments, at her regular hours and wages. In June 2020, the claimant returned to work at Iowa State University.

The claimant filed for unemployment insurance benefits with an effective date of March 22, 2020. Her weekly benefit amount was determined to be \$183.00. The claimant received benefits of \$183.00 per week from March 22, 2020, to the week ending June 20, 2020. This is a

total of \$2,379.00 in state unemployment insurance benefits after the separation from employment. She also received \$7,200.00 in Federal Pandemic Unemployment Compensation for the twelve-week period ending June 20, 2020. The claimant filed her weekly claim and was asked to report her gross earnings for the week. She was confused and reported no earnings for the twelve- week period.

The employer paid her the following gross wages:

- For the benefit week ending March 28, 2020, the claimant was paid \$145.97.
- For the benefit week ending April 4, 2020, the claimant was paid \$161.37.
- For the benefit week ending April 11, 2020, the claimant was paid \$165.11.
- For the benefit week ending April 18, 2020, the claimant was paid \$123.64.
- For the benefit week ending April 25, 2020, the claimant was paid \$162.14.
- For the benefit week ending May 2, 2020, the claimant was paid \$167.31.
- For the benefit week ending May 9, 2020, the claimant was paid \$198.77.
- For the benefit week ending May 16, 2020, the claimant was paid \$166.32.
- For the benefit week ending May 23, 2020, the claimant was paid \$171.93.
- For the benefit week ending May 30, 2020, the claimant was paid \$166.98.
- For the benefit week ending June 6, 2020, the claimant was paid \$156.53.
- For the benefit week ending June 13, 2020, the claimant was paid \$166.32.
- For the benefit week ending June 20, 2020, the claimant was paid \$173.14.

REASONING AND CONCLUSIONS OF LAW:

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 Admin. Code r. 871-24.23(26) provides:

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

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

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.

(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.

During the twelve-week period ending June 20, 2020, the employer paid the claimant the same wages she would normally receive. She cannot be considered totally, partially, or temporarily employed when she performs the same work for the same wages for the employer. The claimant is not eligible to receive unemployment insurance benefits twelve-week period ending June 20, 2020. Benefits are denied.

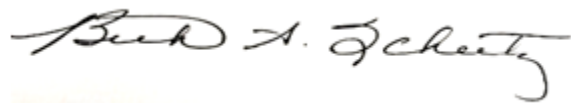
The issue of whether claimant has been overpaid unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

DECISION:

The September 9, 2020, (reference 01) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective March 22, 2020. Regular unemployment insurance benefits funded by the state of Iowa are denied until such time as the claimant is able to and available for work.

The issue of whether claimant has been overpaid unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify 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 under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.



Beth A. Scheetz
Administrative Law Judge
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November 18, 2020
Decision Dated and Mailed

bas/mh