

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

HANNAH K OLLENDIECK
Claimant

HAWKEYE CARE CTR OF CRESCO LLC
Employer

APPEAL 17A-UI-10856-JCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/01/17
Claimant: Respondent (1R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment

STATEMENT OF THE CASE:

The employer filed an appeal from the October 19, 2017, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 8, 2017. The claimant participated personally. The employer participated through Orson Bauder. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant able to work and available for work effective October 1, 2017?

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: The claimant was hired to work full-time as a CNA. From September 7, 2017 through October 7, 2017, the employer did not have full-time work available for the claimant as contemplated in the original contract of hire. The employer placed the claimant on an unpaid suspension while under investigation.

The claimant established an unemployment claim with an effective date of October 1, 2017, and made a claim for benefits for the week ending October 7, 2017 only. The claimant was able and available for work, had the employer made work available. The claimant permanently separated from employment on October 19, 2017, when she quit for another job.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is able and available for work

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.

Because the claimant was not employed under the same hours and wages as contemplated at hire beginning September 7, 2017, she is considered unemployed. The claimant was able to and available to perform work but not permitted by the employer because the employer would not permit her to work. Benefits may be allowed based upon reporting of weekly earnings. For whatever period the employer is not offering the same wages and hours as contemplated in the contract or terms of hire, it may be liable for benefit charges to its account.

Iowa Admin. Code r. 871-24.32(9) provides:

(9) Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification. This rule is intended to implement Iowa Code section 96.5 and Supreme Court of Iowa decision, *Sheryl A. Cosper vs. Iowa Department of Job Service and Blue Cross of Iowa*.

REMAND: The claimant's September 7, 2017 suspension from employment is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

REMAND: The claimant's permanent separation from employment effective October 19, 2017 is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The October 19, 2017, (reference 01) unemployment insurance decision is affirmed. The claimant was able to work and available for work effective October 1, 2017. Benefits are allowed provided she is otherwise eligible. **REMAND:** The claimant's September 7, 2017 suspension from employment is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination. **REMAND:** The claimant's permanent separation from employment effective October 19, 2017 is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn