

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MELISSA A COPE
Claimant

APPEAL 17A-UI-11105-DL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNITYPOINT HEALTH – MARSHALLTOWN
Employer

OC: 10/08/17
Claimant: Respondent (2)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The employer filed an appeal from the October 27, 2017, (reference 01) unemployment insurance decision that allowed benefits based upon being partially unemployed and able to and available for work with Unity Point Health – Marshalltown (Unity). The parties were properly notified about the hearing. A telephone hearing was held on November 16, 2017. Claimant participated. Employer participated through human resource manager Aaron Wedo and DON Chris Hawkins.

ISSUES:

Does the claimant meet the definition of being considered partially unemployed?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time (three 12-hour days totaling 32 or more hours) monitor and patient care technician/unit clerk in the intensive care department of Unity. She was and remains employed in the same capacity for Central Iowa Healthcare (CIH) through April 30, 2017, and the business transferred to Unity effective May 1, 2017.

During September and October 2017, there was a lower patient census so the employer placed her on standby status. Claimant had been scheduled to work on the hearing date but received a 5:00 a.m. message that she would be on standby for the day. CIH used the same system. Claimant is paid \$2.00 per hour to be on standby. She does pick up extra shifts in the department. She was available to work on days when the employer put her on standby. The claimant's weekly benefit amount (WBA) is \$419.00. The week-ending October 21, 2017, she took leave time when there were 12 hours available to her each day on October 20 and 21 at \$16.25 per hour.

Claimant volunteered to work prn or as-needed between May 19 and August 12, 2017, and returned to her regular full-time work on August 13, 2017. This had no impact on hours available to her in September and October.

Hawkins offered her cross-training hours in the emergency department as an assistant. She declined because she had applied for another position in the surgical department, was not comfortable working in the emergency department because it uses a different computer system, and the work there as a clerk was not within the scope of her training or expertise, but the employer would provide on-the-job training. As of the hearing date there was no decision on the surgical department job.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not 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 Admin. Code r. 871-24.22(2) provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

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 96.7(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 Admin. Code r. 871-24.23(16) provides:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

The limitation of hours was triggered by claimant's inability to work or unavailability for the available hours. Because the level of employment is consistent with the base-period wage

history with this employer, she may not be considered partially unemployed. Nor is she considered available for work to fill standby hours.

DECISION:

The October 27, 2017, (reference 01) unemployment insurance decision is reversed. The claimant is not partially unemployed, is not available for work and benefits are denied. The account of the employer Unity (591817) is not chargeable for the period at issue.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/rvs