

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LYNETTE M WYATT
Claimant

H3 HOSPITALITY LLC
Employer

APPEAL 17A-UI-04666-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/02/17
Claimant: Appellant (4-R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a – Same Base Period Employment

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 27, 2017 (reference 02) unemployment insurance decision that denied benefits based upon a determination that claimant was still employed at the same hours and wages as contemplated in her original contract of hire. The parties were properly notified of the hearing. A telephone hearing was held on May 19, 2017. The claimant, Lynette M. Wyatt, participated. The employer, H3 Hospitality, L.L.C., did not answer when called at the hearing time and did not participate in the hearing. The administrative law judge took official notice of the administrative record.

ISSUES:

Does the claimant meet the definition of being considered partially unemployed?
Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part time, most recently as a breakfast employee, beginning sometime in April 2017. Claimant had previously worked for this employer beginning in October 2016 as a full-time employee. Based on claimant's weekly continued claims for benefits, it appears that she was laid off from her employment prior to December 25, 2016.

Claimant testified that she returned to work for two weeks in April 2017. Claimant reported \$36.00 in wages for the week ending April 22, 2017, and she reported \$23.00 in wages for the week ending April 29, 2017. Claimant testified that she was discharged after those two weeks of work. A review of the administrative record indicates there has not been a fact-finding interview or unemployment insurance decision regarding the separation from employment in the second quarter of 2017.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not able to work and available for work for the weeks ending April 8, 2017, and April 15, 2017. Claimant was eligible for partial unemployment benefits for the weeks ending April 22, 2017, and April 29, 2017.

Eligibility for Weeks Ending April 8 and April 15

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 Admin. Code r. 871-24.22(2)c provides:

Benefits 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.

c. Intermittent employment. An individual cannot restrict employability to only temporary or intermittent work until recalled by a regular employer.

Iowa Admin. Code r. 871-24.23(27) provides:

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

(27) Failure to report on a claim that a claimant made any effort to find employment will make a claimant ineligible for benefits during the period. Mere registration at the workforce development center does not establish that a claimant is able and available

for suitable work. It is essential that such claimant must actively and earnestly seek work.

The administrative record indicates claimant did not make any job contacts during the weeks ending April 8, 2017, and April 15, 2017. While claimant was not obligated to make job contacts during her first four weeks of layoff, the administrative record shows claimant had not reported any wages since at least prior to the week ending December 24, 2016, so she had been laid off for well over four weeks. As claimant did not report that she made any effort to find employment, the administrative law judge finds she was not able to work and available for work for the two weeks ending April 15, 2017.

Eligibility for Weeks Ending April 22 and April 29

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.

Claimant testified that she was brought back to work for two weeks as a part-time employee. Because the claimant is not currently employed under the same hours and wages as contemplated at hire, she is considered partially unemployed. 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.

DECISION:

The April 27, 2017 (reference 02) unemployment insurance decision is modified in favor of the appellant. The claimant was not able to work and available for work for the weeks ending April 8, 2017, and April 15, 2017. The claimant is considered partially unemployed for the weeks ending April 22, 2017, and April 29, 2017, and benefits are allowed, provided she is otherwise eligible. She is required to report gross wages earned for each week of benefits claimed. The employer's account (572800) may be liable for charges.

REMAND:

The issue of claimant's separation from H3 Hospitality, L.L.C. in April 2017 is remanded to the Benefits Bureau of Iowa Workforce Development for initial investigation and determination.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn