

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JESSICA C NOTHDORF
Claimant

MARC S HARDING PC
Employer

APPEAL 15A-UI-05013-DL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/29/15
Claimant: Respondent (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The employer filed an appeal from the April 16, 2015, (reference 01) unemployment insurance decision that allowed benefits based upon not being able to or available for work. The parties were properly notified about the hearing. A telephone hearing was held on July 27, 2015. Claimant participated and was represented by Stuart Higgins, Attorney at Law. Employer participated through attorney, Marc Harding. Claimant's Exhibit A was received. Employer's Exhibit 1 was received.

ISSUE:

Was the claimant able to and available for work effective March 29, 2015?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part time (24 hours per week) as a legal assistant from May 6, 2013, and was separated from employment on April 27, 2015, when she quit. She was hired to work "lenient" hours part time Monday, Tuesday, Thursday and Friday from 8:50 a.m. to 3:00 p.m. On March 27, Harding told claimant he was cutting everyone's hours effective March 31 because he would not be in the office much over the summer for various personal and business reasons, and because the office was most busy on Mondays and Friday afternoons, he wanted her to change her hours to Monday and Friday from 8:45 a.m. to 4:30 p.m., which would reduce her hours to 12 per week. The prior summer she had voluntarily reduced her hours but did not have plans to do so the summer of 2015. Claimant filed a claim for partial unemployment insurance benefits and made claims for benefits totaling \$347.00 through the week ending April 25, 2015. In response to that claim Harding told her the hours would return to 24 per week and she may start later but she would have to work through 4:30 p.m. Claimant said that was still not workable with after-school care and quit.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is partially unemployed for the four weeks ending April 25, 2015.

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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 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, 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.

An individual shall be deemed partially unemployed in any week in which 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) 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.

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 § 96.8, subsection 5.

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 § 96.8, subsection 5.

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 § 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 § 85.33, § 85.34, subsection 1, or § 85A.17, or responsible for paying indemnity insurance benefits.

Iowa Admin. Code r. 871-23.43(4)a provides in part:

(4) Supplemental employment.

a. An individual, who has been separated with cause attributable to the regular employer and who remains in the employ of the individual's part-time, base period employer, continues to be eligible for benefits as long as the individual is receiving the same employment from the part-time employer that the individual received during the base period. The part-time employer's account, including the reimbursable employer's account, may be relieved of benefit charges....

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 16, 2015, (reference 01) unemployment insurance decision is affirmed. The claimant was partially unemployed through the week ending April 25, 2015, and benefits are allowed, provided she is otherwise eligible. The employer's account (135420) may be liable for charges.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

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