

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LATRISH ONEAL
Claimant

MLY INVESTMENTS LLC
Employer

**APPEAL 20A-UI-01358-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/19/20
Claimant: Appellant (4R)**

Iowa Code § 96.19(38)b – Definitions – Total, partial unemployment
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search
Iowa Code § 96.7(2)A(2) – Charges – Same base period employment
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages

STATEMENT OF THE CASE:

Claimant filed an appeal from the February 11, 2020 (reference 01) unemployment insurance decision that denied benefits finding claimant was not partially unemployed because she was still employed for the same hours and wages as contemplated in the original contract of hire. The parties were properly notified of the hearing. A telephone hearing was held on March 3, 2020, at 8:00 a.m. Claimant participated via written statement. Employer participated through Steven Young, Director of Operations. Employer's Exhibits 1 – 6 were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant is totally, partially or temporarily unemployed.
Whether the claimant is able to and available for work.
Whether claimant is still employed at the same hours and wages.
Whether employer's account is subject to charge.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began employment with MLY Investments, LLC (d/b/a Freddy's Frozen Custard and Steakburgers) as a part-time Team Member and Crew Trainer on September 18, 2018. In December 2019, employer reduced claimant's hours per week from 20-30 hours to 12-18 hours due to attitude and job performance issues. In early January 2020, employer further reduced claimant's hours per week to 6-12 hours due to claimant's failure to show improvement in her job performance and a decrease in business. Claimant filed an original claim for unemployment insurance benefits effective January 19, 2020 due to the reduction in hours.

Claimant's employment with MLY Investments, LLC ended on February 21, 2020. Claimant's hourly wage was \$10.50. Claimant's weekly benefit amount is \$241.00. There has been no

initial investigation and determination regarding claimant's separation from employment with MLY Investments, LLC.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was partially unemployed January 19, 2020 until February 20, 2020. Benefits are allowed, provided claimant is otherwise eligible. Claimant is totally unemployed effective February 21, 2020 and is eligible for benefits pending a determination of whether her separation from employment disqualifies her from receiving benefits.

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. 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 96.19(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) 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.

From January 19, 2020 until February 20, 2020, claimant was not employed under the same hours and wages as contemplated at hire and earned less than her weekly benefit amount plus fifteen dollars; therefore, claimant was partially unemployed during that time. Although claimant was partially unemployed for disciplinary reasons, there is nothing in the law that states the reason for the reduction of hours should be taken into consideration when deciding whether a claimant is eligible for partial unemployment insurance benefits. Benefits are allowed based upon reporting of gross weekly earnings, provided claimant is otherwise eligible. Because claimant was partially unemployed, the requirement that claimant be able to and available for work is waived. For whatever period the employer was 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.

Claimant is totally unemployed effective February 21, 2020 and is eligible for benefits pending a determination of whether her separation from employment disqualifies her from receiving benefits. The issue of separation should be remanded to the Benefits Bureau for an initial investigation and determination.

DECISION:

The February 11, 2020 (reference 01) unemployment insurance decision is modified in favor of appellant. Claimant was partially unemployed from January 19, 2020 until February 20, 2020. Benefits are allowed, provided claimant is otherwise eligible. Claimant is required to report gross wages earned for each week of benefits claimed. Employer's account may be liable for charges.

Claimant is totally unemployed effective February 21, 2020 and is eligible for benefits pending a determination of whether her separation from employment disqualifies her from receiving benefits.

REMAND:

The issue of separation is remanded for an initial investigation and determination.

Adrienne C. Williamson
Administrative Law Judge
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Decision Dated and Mailed

acw/scn