

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALYSHA OSBORNE
Claimant

EATSTREET, INC.
Employer

APPEAL 20A-UI-03378-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/28/19
Claimant: Appellant (2)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

On April 22, 2020, Alysha Osborne (claimant/appellant) filed a timely appeal from the April 13, 2020 (reference 02) unemployment insurance decision that found she was not eligible for benefits.

A telephone hearing was held on May 14, 2020. The parties were properly notified of the hearing. The claimant participated personally. Eatstreet, Inc. (employer/respondent) did not register a number for the hearing and did not participate.

Claimant's Exhibits 1-3 were admitted. Official notice was taken of the administrative record.

ISSUE(S):

Is the claimant receiving the same employment from employer as during the base period?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant worked for employer as a delivery driver. Claimant began working for employer in November or December of 2019. The last day claimant worked on the job was March 17, 2020. Claimant's immediate supervisor was Thomas Lee. Claimant is still employed by employer.

Claimant is and always has been employed by employer in an on-call capacity. She had no set schedule or minimum or maximum hours she had to work. She would simply select as many or as few shifts as she wished to work and as were available. Claimant has not quit or been discharged by employer. She is still able to and available for work and can still pick up available shifts. However, since the pandemic began, there have not been shifts available to pick up.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the April 13, 2020 (reference 02) unemployment insurance decision that found claimant ineligible for benefits is REVERSED. Claimant is eligible for benefits, so long as she meets all other eligibility requirements.

Claimant is and always has been employed by employer in an on-call capacity. She had no set schedule or minimum or maximum hours she had to work. She would simply select as many or as few shifts as she wished to work and as were available. Claimant has not quit or been discharged by employer. She is still able to and available for work and can still pick up available shifts. However, since the pandemic began, there have not been shifts available to pick up.

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 Code section 96.7(2)a(2)(a) 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 is still employed by employer in the same way as during the base period. She can still take as many or as few shifts as she wishes to and as are available. Because the claimant is receiving the same employment from employer as during the base period, benefits paid to claimant shall not be charged against the account of the employer.

DECISION:

The April 13, 2020 (reference 02) unemployment insurance decision that determined claimant was ineligible to receive unemployment insurance benefits is REVERSED. Claimant is eligible for benefits, so long as she meets all other eligibility requirements. Employer's account shall not be charged.



Andrew B. Duffelmeyer
Administrative Law Judge
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May 20, 2020
Decision Dated and Mailed

abd/mh