

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ALANA R ERHART
Claimant

APPEAL NO. 21A-UI-13822-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA
Employer

OC: 03/15/20
Claimant: Appellant (4)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code section 96.1A(37) – Temporary & Partial Unemployment

STATEMENT OF THE CASE:

The claimant, Alayna Erhart, filed a timely appeal from the June 2, 2021, reference 01, decision that denied benefits effective March 15, 2020, based on the deputy's conclusion that the claimant was not partially unemployed within the meaning of the law. After due notice was issued, a hearing was held on August 12, 2021. Claimant participated. Scott Coons represented the employer. There were three appeal numbers set for a consolidated hearing: 21A-UI-13822-JTT, 21A-UI-13823-JTT and 21A-UI-13824-JTT. Exhibits A and B were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, DBIN and WAGE-A. The administrative law judge took official notice of Red Lobster's SIDES response to the notice of claim issued to that employer.

ISSUES:

Whether the claimant was able to work and available for work for the period beginning March 15, 2020.

Whether the claimant was partially and/or temporarily unemployed for the period beginning March 15, 2020.

Whether the employer's account may be charged for benefits for the period beginning March 15, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant is employed by the University of Iowa (UI) as a part-time nursing assistant. The claimant began the UI employment in 2018. Since May 2019, the claimant has had a half-time, 20-hours per week, appointment and a set schedule wherein the claimant works on 7:00 a.m. to 3:00 p.m. on Thursdays and from 7:00 a.m. to 7:00 p.m. on Saturday and Sunday of alternating weeks. During the week that ended July 18, 2020, the claimant was required to take two days of unpaid time off from the UI employment as part of a mandatory furlough. Accordingly, during the week that ended July 18, 2020, the UI had no work for the claimant. The UI has otherwise had the usual 20 hours of work available to the claimant. The claimant's wage for the UI work is \$15.15 an hour. The UI has not decreased the claimant's wage.

The claimant established an original claim for benefits that was effective March 15, 2020. Iowa Workforce Development set the weekly benefit amount for regular benefits at \$345.00. The claimant made weekly claims for each of the weeks between March 15, 2020 and April 24, 2021. The claimant remained able to work at all relevant times. For all but two of two of the weeks, the claimant reported \$303.00 in wages. For the week ending March 28, 2020, the claimant reported \$356.00 in wages. For the week ending July 18, 2020, the claimant reported zero wages. The claimant has two base period employers: The University of Iowa and Red Lobster Restaurants, L.L.C. The Red Lobster employment pre-dates the UI employment. The claimant last performed work for Red Lobster on March 13, 2020.

The claimant established the March 15, 2020 original claim for benefits in response to being laid off from the Red Lobster employment effective March 17, 2020. At that time, Red Lobster temporarily closed its doors in response to Governor Reynolds' March 17, 2020 State of Public Health Disaster Emergency proclamation, in which the Governor directed Iowa restaurants to discontinue in-person dining in order to slow community spread of COVID-19. The claimant had worked 16 to 20 hours per week as a server at Red Lobster from May 2019 until the layoff date. Red Lobster told the claimant to wait for notice that she was recalled from the employment.

Red Lobster responded to the notice of claim issued to that employer via SIDES. Red Lobster reported that the claimant was off work pursuant to a COVID-19 pandemic based disaster related separation.

Red Lobster did not recall the claimant to the employment for more than a year after the layoff. From April 1, 2020 through September 5, 2020, Iowa Workforce Development waived the work search requirement. Effective September 6, 2020, Iowa Workforce Development re-imposed the work search requirement. On April 15, 2021, Red Lobster notified the claimant that Red Lobster was recalling the claimant to that employment. The claimant returned to the Red Lobster employment on April 28, 2021. The claimant did not look for other employment to replace the Red Lobster employment. Rather, the claimant continued in the part-time UI employment and waited to be recalled to Red Lobster.

REASONING AND CONCLUSIONS OF LAW:

The present matter concerns the claimant's eligibility for benefits during the period of March 15, 2020 through the March 13, 2021 benefit year end date. This matter also addresses the week that ended March 20, 2021, when no benefit year was in effect.

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:

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.

Iowa Admin. Code r. 871-24.23(20) and (26) provides:

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

(20) Where availability for work is unduly limited because the claimant is waiting to be recalled to work by a former employer or waiting to go to work for a specific employer and will not consider suitable work with other employers.

...

(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 96.1A(37) 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.

If a claimant 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. Iowa Code section 96.7(2)(a)(2)(a).

The evidence in the record establishes that the claimant was temporarily laid off from the University of Iowa employment during the week that ended July 18, 2020. The claimant is eligible for benefits for that week, provided the claimant meets all other eligibility requirements. The University of Iowa's account may be charged for benefits for the week that ended July 18, 2020.

Aside from the temporary layoff for the week that ended July 18, 2020, the University of Iowa has at all times since March 15, 2020 had the same work available for the claimant as existed in the base period. Accordingly, aside from the temporary layoff during the week that ended July 18, 2020, the claimant has not been temporarily laid off or partially unemployed from the University of Iowa. The University of Iowa's account will not be charged for benefits for any other week but the week that ended July 18, 2020.

The fact that the claimant continued in the part-time employment with the University of Iowa throughout the claim period would not prevent her from being eligible for unemployment insurance benefits based on the March 17, 2020 layoff, provided she met all other eligibility requirements. Those other requirements would include the requirement that she remain able to work and available for work.

Because the work search requirement was waived through the benefit week that ended September 5, 2020, the claimant is deemed to have met the able and available requirements during the period of March 15, 2020 through September 5, 2020. The claimant is eligible for benefits for that period, provided she meets all other eligibility requirements.

Because the waiver of the work search requirement ended on September 5, 2020, and because the claimant could not be deemed *temporarily* unemployed from the Red Lobster employment at that late date, the claimant's decision to forgo a work search to replace the Red Lobster employment prevents her from meeting the availability requirement for the period beginning September 6, 2020. Benefits are denied for the period beginning September 6, 2020. The availability disqualification continued through the end of the benefit year that expired on March 13, 2021. The availability disqualification continued through the week that ended March 20, 2021, when there was no benefit year in effect.

DECISION:

The June 2, 2021, reference 01, decision is modified in favor of the claimant/appellant as follows. The claimant was temporarily laid off from the University of Iowa employment during the week that ended July 18, 2020. The claimant met the able and available requirements during the period of March 15, 2020 through September 5, 2020. The claimant is eligible or

benefits for the period of March 15, 2020 through September 5, 2020, provided she meets all other eligibility requirements. The University of Iowa's account may be charged for benefits for the week that ended July 18, 2020. The University of Iowa's account shall not be charged for benefits for any week other than the week that ended July 18, 2020. During the period of September 6, 2020 through the March 13, 2021 benefit year end date, the claimant unduly restricted her availability for work and did not meet the availability requirements. Benefits are denied effective September 6, 2020. The availability disqualification continued through the March 13, 2021 benefit end date. The availability disqualification continued through the week that ended March 20, 2021, when there was no benefit year in effect.



James E. Timberland
Administrative Law Judge

September 20, 2021
Decision Dated and Mailed

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