

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LATOYA M PARROW
Claimant

DOLGENCORP LLC
Employer

APPEAL NO. 21A-UI-01597-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/26/20
Claimant: Respondent (2)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.19(38) – Temporary and Partial Unemployment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 11, 2020, reference 03, decision that allowed benefits effective July 26, 2020, provided the claimant was otherwise eligible, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was able to work, available for work, but not performing work in the same pattern as in the base period. After due notice was issued, a hearing was held on February 22, 2021. Claimant participated. Shelly Stouffer represented the employer. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A.

ISSUES:

Whether the claimant was able to work and available for work during the period of July 26, 2020 through December 19, 2020.

Whether the claimant was partially and/or temporarily during the period of July 26, 2020 through December 19, 2020.

Whether the employer's account may be charged for benefits for the period of July 26, 2020 through December 19, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant is employed by Dolgencorp, L.L.C. as an assistance manager at a Dollar General store in Davenport. The claimant's weekly hours fluctuate between about 25 hours per week to as much as 37 hours per week. Though the parties call it full-time employment, the claimant has historically worked part-time hours. Since March 2020, the claimant's wage has been \$11.50 per hour. When the COVID-19 pandemic arrived, the claimant requested to move from day shift hours to evening shift hours and the employer accommodated her request. More recently, the claimant has requested to return to day shift hours.

The claimant established an original claim for benefits that was effective July 26, 2020. The claimant filed the claim in response to a temporary downward fluctuation in work hours. Iowa

Workforce Development set the weekly benefit amount for regular benefits at \$231.00. On December 20, 2020, the claimant made weekly claims for each of the claim weeks between July 26, 2020 and December 19, 2020. For each claim week, the claimant's earned wages exceeded her weekly benefit amount by more than \$15.00.

REASONING AND CONCLUSIONS OF LAW:

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 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.

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

Iowa Admin. Code r. 871-24.2(1)g provides:

Procedures for workers desiring to file a claim for benefits for unemployment insurance.

(1) Section 96.6 of the employment security law of Iowa states that claims for benefits shall be made in accordance with such rules as the department prescribes. The department of workforce development accordingly prescribes:

g. No benefit payment shall be allowed until the individual claiming benefits has completed a continued claim online or as otherwise directed by the department. The weekly voice response continued claim shall be transmitted not earlier than noon of the Saturday of the weekly reporting period and, unless reasonable cause can be shown for the delay, not later than close of business on the Friday following the weekly reporting period.

(1) The weekly continued claim shall be transmitted not earlier than 8 a.m. on the Sunday following the Saturday of the weekly reporting period and not later than close of business on the Friday following the weekly reporting period.

(2) An individual claiming benefits using the weekly continued claim system shall personally answer and record such claim on the system unless the individual is disabled and has received prior approval from the department.

(3) The individual shall set forth the following:

1. That the individual continues the claim for benefits;
2. That except as otherwise indicated, during the period covered by the claim, the individual was fully or partially unemployed, earned no gross wages and received no benefits, was able to work and available for work;
3. That the individual indicates the number of employers contacted for work, the contact information for each employer contacted, and the result of the contact;
4. That the individual knows the law provides penalties for false statements in connection with the claim;

5. That the individual has reported any job offer received during the period covered by the claim;
6. That the individual understands the individual's responsibility to review the individual's claim records to ensure there is no delay in filing the individual's weekly claim to remain in continuous reporting status. Failure to file claims each week will require a claimant to submit a claim application to reactivate the claim;
7. Other information required by the department.

[Emphasis added.]

The claimant cannot be considered partially unemployed and is not eligible for benefits for any of the weeks between August 7, 2020 and December 19, 2020, because her weekly wages exceeded her weekly benefit amount by more than \$15.00 during each of those weeks.

In addition, the claimant is not eligible for benefits for any week between July 26, 2020 and December 12, 2020 because she failed to file a timely weekly claim for those weeks.

Because no benefits have been paid, there is no overpayment of benefits to address.

DECISION:

The December 11, 2020, reference 03, decision is reversed. The claimant has not been partially unemployed within the meaning of the law and is not eligible for benefits for the weeks between August 7, 2020 and December 19, 2020. In addition, the claimant is not eligible for benefits for any week between July 26, 2020 and December 12, 2020 because she failed to file a timely weekly claim for those weeks.



James E. Timberland
Administrative Law Judge

March 8, 2021
Decision Dated and Mailed

jet/kmj