

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DEBRA K DERSHAM
Claimant

SEVENTH AVENUE INC
Employer

APPEAL NO. 21A-UI-15160-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/25/21
Claimant: Respondent (2)**

Iowa Admin. Code r. 871-24.23(26) – Part-Time Worker – Same Wages and Hours
Iowa Code § 96.4-3 – Able and Available
Iowa Code § 96.7(2)A(2) – Partial Benefits
Iowa Code § 96.19(38) – Total and Partial Unemployment
871 IA Admin. Code – 24.22(2)(I) – On Call Worker

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated June 25, 2021, reference 01, which held claimant able and available for work. After due notice, a hearing was scheduled for and held on August 30, 2021. Claimant participated personally. Employer participated by Teah Shirk. Claimant failed to respond to the hearing notice and did not participate. Employer's Exhibits 1-2 were admitted into evidence.

ISSUES:

Whether claimant is still employed at the same hours and wages?

Whether claimant is eligible to receive partial benefits?

Whether claimant is able and available for work?

FINDINGS OF FACT:

The claimant currently works for Seventh Avenue, a base period employer, part time under the same terms and conditions as contemplated in the original contract of hire. Claimant works as a part time worker and her hours vary during the different times of the season. In April of this year claimant had her work hours diminished as work was letting up. She had not been guaranteed hours of any amount.

Claimant's work was diminished in the spring as hours were reduced based on fewer orders to fill. Claimant's work is seasonal in that there are more hours available during the holiday season. Claimant's weekly benefit amount sits at \$335.00/week. Claimant filed for no unemployment benefits from the April 25, 2021 filing of her new original claim until a job separation took place on May 24, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not partially unemployed.

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 96.19(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.

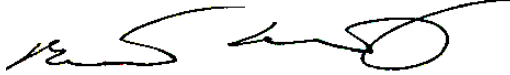
(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

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.

Because the claimant does not have a specific hourly history and works part time, claimant is not eligible to receive benefits based on the loss of some hours and claimant is not considered partially unemployed. Benefits are denied.

DECISION:

The June 25, 2021, reference 01, decision is reversed. The claimant is not partially unemployed and benefits are denied.



Blair A. Bennett
Administrative Law Judge

September 3, 2021
Decision Dated and Mailed

bab/scn