

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JENNIFER LINDEN
Claimant

BAKER'S PRIDE INC
Employer

APPEAL 19A-UI-09982-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/17/19
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

On December 17, 2019, Baker's Pride Inc. (employer/appellant) filed a timely appeal from the December 12, 2019 (reference 03) unemployment insurance decision that determined claimant was not eligible to receive unemployment insurance benefits.

The parties were properly notified of the hearing. A telephone hearing was held on January 14, 2020 at 9 a.m. Claimant participated personally. Employer participated through Claims Specialist Kimberly Burleigh.

Official notice was taken of claimant's payment and wage history on the department's information database. Employer's Exhibit 1 was admitted.

ISSUE(S):

- I. Is the claimant totally, partially, or temporarily unemployed?
- II. Is the claimant able to and available for work?
- III. Is the claimant still employed at the same hours and wages? Is the employer's account subject to charge?

FINDINGS OF FACT:

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

Claimant is employed by employer full-time. Claimant began employment May 11, 2019. Claimant was temporarily laid off from November 20 through December 11 due to a plant shutdown. Claimant returned to work after the plant shut down at the same hours and wages.

Employer's representative originally protested claimant's claim for benefits because records indicated she was still employed and working. Employer's representative reached out to employer's on-site management team for more information but did not hear back because, unbeknownst to claimant's representative, the plant was shut down. Employer's representative subsequently learned the plant had been shut down and submitted a revised response to the department. Employer's representative did not attend the fact-finding hearing, believing her revised response and claimant's statement should be sufficient to demonstrate claimant was temporarily laid off due to a plant shut down. However, claimant was unable to attend the fact-finding hearing because she returned to work on that date, and the fact-finding decision determined claimant was not eligible for benefits because she was still employed for the same wages and hours.

The unemployment insurance system shows claimant's weekly benefit amount is \$268.00. Claimant has filed weekly claims from the benefit week ending November 23, 2019 through the benefit week ending December 7, 2019. The total amount of benefits paid to date is \$643.00.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the December 12 2019 (reference 03) unemployment insurance decision is REVERSED. Claimant is eligible for benefits.

I. Is the claimant totally, partially, or temporarily 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.

Claimant was temporarily unemployed due to a plant shutdown from November 20, 2019 through December 11, 2019. She worked full-time prior to the shut down and has returned to work at the same hours and wages.

II. Is the claimant able to and available for work?

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".

Because the administrative law judge finds claimant was temporarily unemployed, it is unnecessary to address this issue.

III. Is the claimant still employed at the same hours and wages? Is the employer's account subject to charge?

Because the administrative law judge finds claimant was temporarily unemployed, it is unnecessary to address this issue.

DECISION:

The December 12, 2019 (reference 03) unemployment insurance decision is REVERSED. Claimant is eligible for benefits, so long as she meets all other eligibility requirements.

Andrew B. Duffelmeyer
Administrative Law Judge

Decision Dated and Mailed

abd/scn