

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**ASHLEY M SCHRAGE**  
Claimant

**APPEAL NO: 21A-UI-00230-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RAINING ROSE INC**  
Employer

**OC: 07/26/20**  
**Claimant: Appellant (4)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the November 10, 2020, reference 01, decision that denied benefits effective July 26, 2020, based on the deputy's conclusion that the claimant was not partially unemployed. After due notice was issued, a hearing was held on February 4, 2021. Claimant participated. The employer did not provide a telephone number for the appeal hearing and did not participate. Exhibits A and B were received into evidence. 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 November 7, 2020  
Whether the claimant was partially and/or temporarily unemployed during the period of July 26, 2020 through November 7, 2020  
Whether the employer's account may be charged for benefits. The period of July 26, 2020 through November 7, 2020

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant established an original claim for benefits that was effective July 26, 2020. She established a claim for benefits in delayed response to a March 17, 2020 layoff from a part-time employment.

Iowa Workforce Development set the claimant's weekly benefit amount for regular benefits at \$531.00. The claimant made weekly claims for each of the weeks between July 26, 2020 and November 7, 2020. At the time the claimant established her claim for benefits, the claimant had full-time employment as a Packaging Team Lead with Raining Rose, Inc. and part-time employment with Bricks and Ivy, L.L.C. as a server. The full-time employment paid \$17.60 per hour, \$704.00 per week.

During the weeks that ended August 1 and August 8, 2020, the claimant worked full-time at Raining Rose and part-time hour at Bricks & Ivy. The claimant's wages for each week included the \$704.00 from Raining Rose.

During the week that ended August 15, 2020, the claimant earned reduced wages due to the August 10, 2020 derecho. The full-time employer closed midway through the business day on Monday, August 10, remained closed for the remainder of the week, and reopened at the beginning of the next week. The part-time employer did not reopen following the derecho. The claimant's wages for the week that ended August 15, 2020 were only \$115.00.

During the weeks between August 16, 2020 and October 31, 2020, the claimant returned to her full-time hours at Raining Rose and continued to receive her full-time pay of \$704.00 per week.

During the week that ended November 7, 2020, Raining Rose laid off the claimant. The layoff occurred during the earlier afternoon hours on Tuesday, November 3, 2020. The claimant worked about 14 hours during the week before the Tuesday afternoon layoff. The claimant's wages for the week that ended November 7, 2020 were about \$246.00.

### **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 Admin. Code r. 871-24.23(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

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).

During the weeks that ended August 15, 2020 and November 7, 2020, the claimant was able to work, available for work, but partially unemployed. The claimant is eligible for benefits for those weeks, provided she met all other eligibility requirements. The employer's account may be charged for benefits for those weeks.

During the two-week period of July 26, 2020 through August 8, 2020, and during the period of August 16, 2020 through October 31, 2020, the claimant was employed full-time and therefore did not meet the unemployment insurance "availability" requirement. The claimant is not eligible for benefits for those weeks.

**DECISION:**

The November 10, 2020, reference 01, decision is modified as follows:

During the weeks that ended August 15, 2020 and November 7, 2020, the claimant was able to work, available for work, but partially unemployed. The claimant is eligible for benefits for those weeks, provided she met all other eligibility requirements. The employer's account may be charged for benefits for those weeks.

During the two-week period of July 26, 2020 through August 8, 2020, and during the period of August 16, 2020 through October 31, 2020, the claimant was employed full-time and therefore did not meet the unemployment insurance "availability" requirement. The claimant is not eligible for benefits for those weeks.



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James E. Timberland  
Administrative Law Judge

February 22, 2021  
Decision Dated and Mailed

jet/mh