

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**LINDA S KILLEAN**

Claimant

**APPEAL 20A-UI-15967-AW-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SEVENTH AVENUE INC**

Employer

**OC: 05/31/20**

**Claimant: Respondent (2R)**

Iowa Code § 96.1A(37) – Definitions – Total, partial unemployment  
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search  
Iowa Code § 96.7(2)A(2) – Charges – Same base period employment  
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
PL 116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation

**STATEMENT OF THE CASE:**

Employer filed an appeal from the November 24, 2020 (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on January 29, 2021, at 11:00 a.m. Claimant did not participate. Employer participated through Teah Shirk, Operations Supervisor. No exhibits were admitted. Official notice was taken of the administrative record.

**ISSUES:**

Whether claimant is totally, partially or temporarily unemployed.  
Whether claimant is able to and available for work.  
Whether claimant is still employed at the same hours and wages.  
Whether employer's account is subject to charge.  
Whether claimant was overpaid benefits.  
Whether claimant is eligible for Federal Pandemic Unemployment Compensation.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a part-time Returns Processor from October 27, 2016 until her employment with Seventh Avenue ended on October 29, 2020. Claimant last performed work for employer on October 14, 2020. Claimant filed an initial claim for unemployment insurance benefits effective May 31, 2020. Claimant filed an ongoing weekly claim for benefits for the week ending October 10, 2020 and October 17, 2020 and reported wages of \$325.00 and \$186.00, respectively. Claimant's weekly benefit amount is \$166.00.

Employer had a policy that required employees who attended mass gatherings to quarantine for 14 days before returning to work. Claimant attended a mass gathering on October 17, 2020. Employer required claimant to quarantine for two weeks; claimant could return to work on

November 2, 2020. On October 29, 2020, claimant notified employer that she was quitting her employment for another job.

There has been no fact-finding interview regarding claimant's separation from employment.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes:

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.

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 96.1A, subsection 37, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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. R. 871-24.23(26) provides:

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

(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 96.7(2)a(2) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the 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. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

For the weeks ending October 10, 2020 and October 17, 2020, claimant performed work for employer. Therefore, claimant was not totally unemployed. Claimant earned more than \$181.00 (her weekly benefit amount plus \$15.00) each of those weeks. Therefore, claimant was not partially unemployed. Claimant is not eligible for benefits from October 4, 2020 through October 17, 2020. Benefits are denied.

For the week ending October 24, 2020, claimant performed no work for employer. Therefore, claimant was totally unemployed. Because claimant was totally unemployed, she is required to be able to and available for work. Claimant has the burden of proving that she was able to and available for work. Claimant has not met that burden. Therefore, benefits are denied.

The issue of separation will be remanded to the Benefits Bureau of Iowa Workforce Development for an initial interview and determination.

**DECISION:**

The November 24, 2020 (reference 02) unemployment insurance decision is reversed. Claimant was not totally or partially unemployed from October 4, 2020 through October 17, 2020. Claimant was totally unemployed effective October 18, 2020 but has not established that she is able to and available for work. Benefits are denied effective October 4, 2020.

**REMAND:**

The issue of separation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial interview and determination.



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February 16, 2021  
Decision Dated and Mailed

acw/ol