

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**DEBRA K DERSHAM**  
Claimant

**SEVENTH AVENUE INC**  
Employer

**APPEAL NO. 21A-UI-15161-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

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

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 28, 202, reference 02, 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.

**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 previously worked for employer as a part time picker and packer. Claimant's hours would fluctuate during different times of the year as employer's need dictate. Claimant filed for benefits when her part time hours decreased.

Claimant did not work for employer after May 24, 2021 as claimant stated she was no longer willing to comply with employer's ongoing mask requirement. Employer instituted a mask requirement for employees on or around June 1, 2020. This requirement was still in place on May 24, 2020. On or shortly before that date, Iowa's governor Kim Reynolds signed into law a ban on mask mandates in schools and for Iowa cities. The ban did not apply to private employers.

Claimant offered no medical reason for her refusal to wear a mask on May 24, 2021.

Claimant signed a request to be laid off from work effective May 24, 2021 and has not worked for employer since that date.

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

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

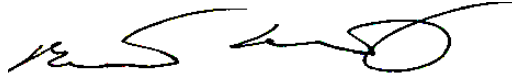
(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

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 chose to stop working for the employer and take a layoff rather than continue complying with employer's mask mandate, claimant is not considered partially unemployed. Benefits are denied.

**DECISION:**

The June 28, 2021, reference 02, decision is reversed. The claimant is not partially unemployed and benefits are denied.



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Blair A. Bennett  
Administrative Law Judge

September 3, 2021  
Decision Dated and Mailed

bab/scn