

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RONUIQUE DIXON
Claimant

D OF S FOODS INC
Employer

APPEAL 20A-UI-13347-S1-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/03/20
Claimant: Appellant (5)

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

Ronuique Dixon (claimant) appealed a representative's October 21, 2020, decision (reference 04) that denied benefits based on her continued employment with D of S Foods (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 21, 2020. The claimant participated personally. The employer participated by Joshua Hutt, Operations Supervisor.

20A-UI-13346 and 20A-UI-13347 were heard at the same time. The administrative law judge took official notice of the administrative file.

ISSUES:

The issue is whether the claimant is eligible for total or partial unemployment benefits, still employed at the same hours and wages, whether the claimant is able and available for work and/or whether the employer's account is subject to charge.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on August 14, 2019, as a full-time kitchen manager. She signed for receipt of the employer's handbook on August 14, 2019.

The claimant had worked for the McDonald's restaurant with a different owner for years. She enjoyed her previous manager and was willing to work additional hours. The claimant was scheduled to work 5:00 a.m. to 11:00 a.m. but stayed and worked to 1:00 p.m. Near the end of her employment, her general manager was Paris. The claimant did not appreciate Paris's management decisions. The two had a meeting with the operations supervisor to discuss the claimant's issues with following Paris's instructions.

At the beginning of May 2020, the claimant thought it was not right of General Manager Paris to expect her to work to 1:00 p.m. and told her general manager this. When General Manager Paris started reducing the claimant's hours, she filed for unemployment insurance benefits.

On or about May 18, 2020, the employer heard the claimant talking loudly and swearing while having a personal conversation on her phone on the work site. On May 21, 2020, the employer approached the claimant with a written warning regarding that inappropriate behavior. The claimant would not sign the warning and wanted to speak with the operations supervisor. On May 22, 2020, the claimant had a conversation with General Manager Paris about whether a worker should quarantine. The claimant left work and did not return. A manager returned with the claimant's keys. The general manager attempted to contact the claimant but she would not answer calls. Continued work was available with the employer had the claimant not resigned.

The claimant filed for unemployment insurance benefits with an effective date of May 3, 2020. Her weekly benefit amount was determined to be \$270.00. The claimant received benefits from May 24, 2020, to the week ending August 29, 2020. This is a total of \$3,562.46 in state unemployment insurance benefits after the separation from employment. She received \$1,890.00 in Pandemic Emergency Unemployment Compensation. She also received \$5,400.00 in Federal Pandemic Unemployment Compensation for the nine-week period ending July 25, 2020. For the three-week period ending May 23, 2020, the claimant reported wages of \$300.00 per week or more. She reported no wages as of May 24, 2020.

REASONING AND CONCLUSIONS OF LAW:

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.

From May 3, 2020, through May 23, 2020, the claimant was at all times employed and earning wages from the employer. She cannot be considered totally or temporarily unemployed. The issue becomes whether she was partially unemployment insurance benefits. For a worker to be

partially unemployed, she must be earning less than her WBA plus \$15.00. Each week the claimant earned \$300.00 or more. This was greater than \$285.00, her WBA plus \$15.00. The claimant was not partially unemployed the three-week period ending May 23, 2020. She was not monetarily eligible for unemployment insurance benefits. Benefits are denied for the three-week period May 23, 2020.

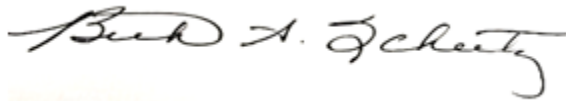
As of May 24, 2020, the claimant was totally unemployed. Benefits are allowed, provided the claimant is otherwise eligible. (See 20A-UI-13346.S1)

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, she may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed. The claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

DECISION:

The October 21, 2020, (reference 04) unemployment insurance decision is modified with no effect. The claimant is not able to work and available for the three-week period May 23, 2020. As of May 24, 2020, the claimant was totally unemployed. Benefits are allowed, provided the claimant is otherwise eligible. (See 20A-UI-13346.S1)

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.



Beth A. Scheetz
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January 6, 2021
Decision Dated and Mailed

bas/mh