

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**CAROL J SMITH**  
Claimant

**APPEAL 20A-UI-11894-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OTTUMWA LAUNDERETTE LC**  
Employer

**OC: 03/15/20  
Claimant: Appellant (4R)**

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Iowa Code § 96.19(38)a & b – Total and Partial Unemployment  
Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

**STATEMENT OF THE CASE:**

The claimant/appellant, Carol J. Smith, filed an appeal from the September 17, 2020 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 20, 2020. The hearing was held as a consolidated hearing with Appeals 20A-UI-11897-JC-T and 20A-UI-11896-JC-T. The claimant participated. The employer, Ottumwa Launderette LC., participated through Ervin Burke, owner. Gloria Bix, manager, also testified.

The administrative law judge took official notice of the administrative records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Does the claimant meet the definition of being considered partially unemployed?  
Is the claimant able to work and available for work effective March 15, 2020?  
If so, is the employer’s account liable for potential charges?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant established a claim for benefits with an effective date of March 15, 2020. Her weekly benefit amount (WBA) is \$163.00.

At the time claimant established her claim for benefits, she worked part-time for Riverside Restaurant in Ottumwa. The restaurant was closed for a period of time, which triggered claimant to open her claim.

Claimant also worked for this employer, part-time as a cleaner, working fifteen hours per week, earning \$10.00 per hour.

From the period of March 15, 2020 through May 30, 2020, claimant worked her usual fifteen hours per week with this employer. Claimant did not record her wages earned for this employer when making weekly continued claims. Claimant did record wages for the weeks ending May 23 and 30, 2020, but they were for Riverside Restaurant only.

Claimant went on a leave of absence May 31-June 13, 2020 because she was exposed to COVID-19, and at the advice of her doctor. Work was available by the employer.

Claimant returned to work June 15, 2020 and worked until her permanent separation effective September 7, 2020. The issue of the claimant's permanent separation has not yet been adjudicated by the Benefits Bureau.

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

For the reasons that follow, the administrative law judge concludes the claimant is partially unemployed and this part-time employer is relieved of benefit charges.

Iowa Code § 96.19(38)b provides:

As used in this chapter, unless the context clearly requires otherwise:

38. "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 § 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", subparagraph (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. 871-24.23(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 Admin. Code r. 871-23.43(4)a provides in part:

(4) Supplemental employment.

a. An individual, who has been separated with cause attributable to the regular employer and who remains in the employ of the individual's part-time, base period employer, continues to be eligible for benefits as long as the individual is receiving the same employment from the part-time employer that the individual received during the base period. The part-time employer's account, including the reimbursable employer's account, may be relieved of benefit charges....

Iowa Admin. Code r. 871-24.22(2)f 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.

f. Part-time worker, student--other. Part-time worker shall mean any individual who has been in the employ of an employing unit and has established a pattern of part-time regular employment which is subject to the employment security tax, and has accrued wage credits while working in a part-time job. If such part-time worker becomes separated from this employment for no disqualifiable reason, and providing such worker has reasonable expectation of securing other employment for the same number of hours worked, no disqualification shall be imposed under Iowa Code section 96.4(3). In other words, if an individual is available to the same degree and to the same extent as when the wage credits were accrued, the individual meets the eligibility requirements of the law.

Claimant in this case is still employed part-time for this employer. Because the claimant has other base-period wages and is currently employed part-time, she may be considered partially unemployed. Partial benefits may be allowed if she is otherwise eligible. Inasmuch as this current part-time employer is offering the same wages and hours as contemplated at hire, no benefit charges shall be made to its account.

The issues of the claimant's permanent separation effective September 7, 2020 with this employer and the claimant's unrecorded wages for the period of March 22, 2020 through July 11, 2020 are remanded to the Benefits Bureau for an investigation/adjustment.

**DECISION:**

The September 17, 2020 (reference 01) initial decision is modified in favor of the appellant. The claimant is partially unemployed and benefits are allowed, provided she is otherwise eligible. The account of this current part-time employer shall not be charged. Claimant should report gross wages for the week in which they are earned for the purpose of establishing continuing eligibility for partial unemployment benefits.

**REMAND:**

The issues of the claimant's permanent separation effective September 7, 2020 with this employer and the claimant's unrecorded wages for the period of March 22, 2020 through July 11, 2020 are remanded to the Benefits Bureau for an investigation/adjustment.



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Jennifer L. Beckman  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
Iowa Workforce Development  
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Des Moines, Iowa 50319-0209  
Fax 515-478-3528

December 2, 2020  
Decision Dated and Mailed

jlb/scn

*Note to Claimant:* This decision denies benefits. *If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of 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>.