

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

AMY S GAULKE
Claimant

APPEAL NO. 21A-UI-01779-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

B & B THEATRES OPERATING COMPANY
Employer

OC: 03/22/20
Claimant: Appellant (1)

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 § 96.1(A)(37) – Total and Partial Unemployment

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated December 15, 2020, reference 01, which held claimant not able and available for work as of June 28, 2020. After due notice, a hearing was scheduled for and held on February 24, 2021. Claimant participated personally and with representative Dennis Gaulke. Employer participated by Cynthia Boren.

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 currently works for B&B Theatres, a base period employer, part time under the same terms and conditions as contemplated in the original contract of hire. Claimant was furloughed by employer for a period beginning on March 20, 2020 and ending on June 27, 2020. After June 27, 2020 claimant had hours available to her at the same level she'd received hours prior to the furlough. Claimant told employer that she did not want to work hours that would put her at a level where she could not receive unemployment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not partially unemployed and the ref 01 decision is affirmed.

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 told employer that she did not wish to work her previous amount of hours as this would have disqualified her from the receipt of unemployment benefits, she is not able and available for her regular hours. Benefits are denied as of June 27, 2020.

DECISION:

The December 15, 2020, reference 01, decision is affirmed. The claimant is not partially unemployed and benefits are denied.



Blair A. Bennett
Administrative Law Judge

March 4, 2021
Decision Dated and Mailed

bab/mh