

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MYKAL L BODEY
Claimant

PER MAR SECURITY & RESEARCH CORP
Employer

APPEAL 21A-UI-22297-AD-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 08/29/21
Claimant: Appellant (5R)

Iowa Code § 96.1A(37) – Total, partial unemployment
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages
Iowa Code § 96.4(3) – Able and Available for Work
Iowa Code § 96.7(2)a(2) – Charges – Same base period employment

STATEMENT OF THE CASE:

On October 7, 2021, Mykal Bodey (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated October 5, 2021 (reference 01) that denied benefits as of August 29, 2021 based on a finding claimant was still employed for the same hours and wages.

A telephone hearing was held on December 14, 2021. The parties were properly notified of the hearing. Claimant participated personally. Per Mar Security & Research Corp (employer/respondent) participated by Hearing Rep. Isabella Kogut. Manager Chelsea Hutchcroft participated as a witness for employer.

Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the claimant totally, partially, or temporarily unemployed?
- II. Is the claimant still employed at the same hours and wages?
- III. Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant began working for employer on June 23, 2020. She was hired for a full-time position and remained in that role until August 7, 2021, when she requested to be moved to a part-time position. There was no guarantee of hours in this part-time position. Claimant last performed work for employer on August 16, 2021. Claimant declined several offered shifts after that time. Claimant requested to move to a part-time position so she could spend more time at home with her children.

Claimant filed a claim for benefits each week from the benefit week ending September 4, 2021 through the benefit week ending November 27, 2021. She was not searching for work elsewhere during that time.

Claimant is no longer employed by employer. It is unclear when the separation from employment occurred. Claimant believed she was still employed by employer even though it had made no attempt to contact her since approximately August 23, 2021 and she had made no attempt to contact it since that date, either. The issue of claimant's separation from employment has not yet been the subject of a fact-finding investigation and determination.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the decision dated October 5, 2021 (reference 01) that denied benefits as of August 29, 2021 based on a finding claimant was still employed for the same hours and wages is MODIFIED with no change in effect.

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 96.1A(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 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.

The administrative law judge finds claimant is ineligible for benefits in the weeks filed. To the extent claimant was still attached to employer during the weeks filed, she was not partially or temporarily unemployed because she was still employed in the part-time position she requested to be moved to, which had no guarantee of hours. To the extent claimant was not attached to employer during the weeks filed, she was not a true participant in the labor market because she was choosing to spend more time at home and was not searching for other work. Benefits are therefore denied during the weeks filed.

DECISION:

The decision dated October 5, 2021 (reference 01) that denied benefits as of August 29, 2021 based on a finding claimant was still employed for the same hours and wages is MODIFIED with no change in effect. Claimant is ineligible for benefits in the weeks filed for the reasons set forth above.

REMAND:

This matter is remanded to the Benefits Bureau for an initial investigation and determination on the issue of whether claimant's separation from employment was disqualifying.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

December 22, 2021
Decision Dated and Mailed

abd/abd

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are 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.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.