

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAYMIE C QUIGLEY
Claimant

O REILLY AUTOMOTIVE INC
Employer

APPEAL 21A-UI-20978-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/18/20
Claimant: Appellant (4R)

Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search

STATEMENT OF THE CASE:

On September 24, 2021, Jaymie Quigley (claimant/appellant) filed an appeal from the Iowa Workforce Development decision dated September 21, 2021 (reference 02) that denied benefits as of July 18, 2021 based on a finding claimant was still employed for the same hours and wages as in the contract of hire.

A telephone hearing was held on November 10, 2021. The parties were properly notified of the hearing. Claimant participated personally and was represented by non-attorney representative Jon Geyer. O'Reilly Automotive Inc. (employer/respondent) participated by HR Business Partner Julie Akers and was represented by attorney Jaki Samuelson.

Employer's Exhibits A-E and Claimant's Exhibit 1 were admitted. Official notice was taken of the administrative record.

ISSUE(S):

- I. 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 9, 2020. Claimant was hired as a full-time outbound material handler. Claimant subsequently transferred to a full-time corporate assistant position beginning October 26, 2020. She remained in that position until her separation from employment. Her last day performing work for employer was July 29, 2021. She was suspended the majority of the week ending July 31, 2021 as the result of an investigation.

Claimant filed a claim for benefits each week from the benefit week ending October 24, 2020 through the benefit week ending November 14, 2020 and again in the benefit week ending July 24, 2020. She was employed by employer and working full-time during this period. She subsequently filed a claim for benefits each week from the benefit week ending July 31, 2021

through the benefit week ending October 16, 2021. Claimant was able and available for work during those weeks.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the decision dated September 21, 2021 (reference 02) that denied benefits as of July 18, 2021 based on a finding claimant was still employed for the same hours and wages as in the contract of hire is MODIFIED in favor of appellant. Claimant is eligible for benefits as set forth below.

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.

The administrative law judge finds claimant ineligible for benefits from the benefit week ending October 24, 2020 through the benefit week ending November 14, 2020 and during the benefit week ending July 24, 2021. This is because during these weeks claimant was employed full-time and working to such an extent as to be unavailable for other work.

The administrative law judge finds claimant is eligible for benefits from the benefit week ending July 31, 2021 through the benefit week ending October 16, 2021. This is because she was either suspended or no longer employed by employer during these weeks and was able and available for other work.

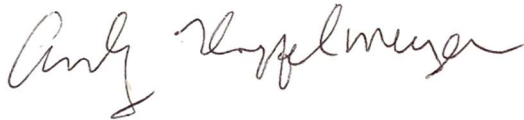
The administrative law judge notes the issue of claimant's separation from employment has not yet been the subject of a fact-finding interview and decision. Depending on whether the separation from employment was disqualifying, benefits may ultimately be denied. This matter is remanded to the Department for a fact-finding interview and issuance of a decision as to whether claimant's separation from employment was disqualifying.

DECISION:

The decision dated September 21, 2021 (reference 02) that denied benefits as of July 18, 2021 based on a finding claimant was still employed for the same hours and wages as in the contract of hire is MODIFIED in favor of appellant. Claimant is eligible for benefits as set forth above.

REMAND:

This matter is REMANDED to the Department for a fact-finding interview and issuance of a decision as to 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 10, 2021
Decision Dated and Mailed

abd/kmj

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>.