

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KIMBERLY K O'BRIEN
Claimant

LUTHER COLLEGE
Employer

APPEAL 20A-UI-09024-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Appellant (4)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.19(38)B – Partial Unemployment

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the July 22, 2020 (reference 01) unemployment insurance decision that found claimant was not eligible for unemployment benefits because she was working the same hours and same wages as in her contract of hire. The parties were properly notified of the hearing. A telephone hearing was held on September 15, 2020. The claimant, Kimberly K. O'Brien, participated personally. The employer, Luther College, participated through witness Matthew Bills. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Is the claimant eligible for total or partial unemployment benefits?
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 this employer on February 14, 1998. Claimant was employed as a full-time dining worker. She is still employed to date. On March 30, 2020, she switched positions to a full-time custodial worker and continued in that position until the beginning of August, 2020. She was not unemployed until June 8, 2020.

The employer instituted two weeks of furloughs for the claimant. Claimant was laid off from June 8, 2020 through June 12, 2020. She did not earn any wages, vacation pay, holiday pay or pension pay for that week and performed no services for the employer. The lack of work was due to the class closures the school implemented when the COVID 19 pandemic occurred. Claimant was also laid off due to lack of work from July 6, 2020 through July 10, 2020. She did not earn any wages, holiday pay, vacation pay or pension pay that week.

Claimant filed her initial claim for unemployment insurance benefits effective March 22, 2020. She reopened her claim on June 7, 2020 and filed an additional claim for benefits July 12, 2020. She did not file any weekly-continued claims until the week-ending June 27, 2020; week-ending July 4, 2020; and week-ending July 11, 2020. She was able to and available for work with this employer during both weeks in which she was laid off.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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 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.

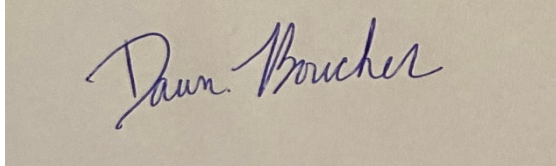
(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

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.

Claimant was on a short-term layoff due to lack of work for the week-ending June 13, 2020 and the week-ending July 11, 2020. She did not perform services or earn any wages, holiday pay or pension pay those two weeks. However, the claimant did not file a weekly-continued claim for benefits for the week-ending June 13, 2020. The claimant was able to and available for work during the short-term layoff if this employer would have had work available to her. As the claimant has established she was able to and available for work, benefits are allowed effective June 7, 2020, *provided the claimant was otherwise eligible.*

DECISION:

The July 22, 2020 (reference 01) decision is modified in favor of the appellant. Claimant was on a short-term layoff the week of June 7, 2020 through June 13, 2020 and the week of July 5, 2020 through July 11, 2020. She was able to and available for work during this short-term layoff. Benefits are allowed effective June 7, 2020, provided the claimant is otherwise eligible.

A rectangular area containing a handwritten signature in blue ink that reads "Dawn Boucher". The signature is written in a cursive style.

Dawn Boucher
Administrative Law Judge

September 17, 2020
Decision Dated and Mailed

db/scn